S. HRG. 98-463

NHTSA OVERSIGHT

HEARING

BEFORE THE

SUBCOMMITTEE ON SURFACE TRANSPORTATION

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

FIRST SESSION

ON

OVERSIGHT OF THE NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

SEPTEMBER 13, 1983

Serial No. 98-43

Printed for the use of the
Committee on Commerce, Science, and Transportation

U.S. GOVERNMENT PRINTING OFFICE

26-789 O WASHINGTON : 1983

5261-8

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

BOB PACKWOOD, Oregon, *Chairman*

BARRY GOLDWATER, Arizona	ERNEST F. HOLLINGS, South Carolina
JOHN C. DANFORTH, Missouri	RUSSELL B. LONG, Louisiana
NANCY LANDON KASSEBAUM, Kansas	DANIEL K. INOUYE, Hawaii
LARRY PRESSLER, South Dakota	WENDELL H. FORD, Kentucky
SLADE GORTON, Washington	DONALD W. RIEGLE, JR., Michigan
TED STEVENS, Alaska	J. JAMES EXON, Nebraska
BOB KASTEN, Wisconsin	HOWELL HEFLIN, Alabama
PAUL S. TRIBLE, JR., Virginia	FRANK R. LAUTENBERG, New Jersey

GERALD J. KOVACH, *Chief Counsel*
RALPH B. EVERETT, *Minority Chief Counsel*

SUBCOMMITTEE ON SURFACE TRANSPORTATION

JOHN C. DANFORTH, Missouri, *Chairman*

LARRY PRESSLER, South Dakota	RUSSELL B. LONG, Louisiana
NANCY LANDON KASSEBAUM, Kansas	DONALD W. RIEGLE, JR., Michigan
BOB KASTEN, Wisconsin	J. JAMES EXON, Nebraska

CONTENTS

	Page
Opening statement by Senator Danforth	1
Opening statement by Senator Hollings	4

LIST OF WITNESSES

Arms, Arnold V., M.D.; Robert S. Vinetz, M.D., chairman, Transportation Hazards Committee, American Academy of Pediatrics; and Robert R. Tiernan, attorney	79
Movie script of Dr. Arms	80
Prepared statement of Dr. Vinetz	83
Blydenburgh, C. R.	89
Attachments	93
Claybrook, Joan, president, Public Citizen; and Rosemary Shahan-Dunlap, president, Motor Voters	45
Prepared statement of Ms. Claybrook	47
Coelho, Hon. Tony, U.S. Representative from California	4
Corcoran, James, superintendent of insurance, State of New York, representing the National Association of Insurance Commissioners, accompanied by Peter Gillies, insurance commissioner, State of Connecticut; Lowell Beck, National Association of Independent Insurers; and Donald L. Schaffer, senior vice president, general counsel, and secretary, Allstate Insurance Co.	55
Prepared statement of Mr. Corcoran	58
Prepared statement of Mr. Beck	63
Prepared statement of Mr. Schaffer	68
DeMuth, Christopher, Administrator for Information and Regulatory Affairs, Office of Management and Budget	32
Letter of December 8, 1983	41
Kelley, Ben, senior vice president, Insurance Institute for Highway Safety	20
Steed, Diane K., Deputy Administrator, National Highway Traffic Safety Administration, Department of Transportation, accompanied by Frank Berndt, Chief Counsel, and Barry Felrice, Associate Administrator for Plans and Programs	7
Prepared statement	16
Answers to questions of the minority	19

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

"Despite Supreme Court Ruling, Airbag Fight Will Continue," article	13
Munro, R. E., vice president, personal lines underwriting, Nationwide Insurance Companies, letter of September 21, 1983	94
National Association of Independent Insurers, comments	95

OVERSIGHT OF NHTSA

TUESDAY, SEPTEMBER 13, 1983

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
SUBCOMMITTEE ON SURFACE TRANSPORTATION,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:30 a.m., in room SR-253, Russell Senate Office Building, Hon. John C. Danforth (chairman of the subcommittee) presiding.

Staff members assigned to this hearing: Karen Phillips, professional staff member, and Loretta Dunn, minority staff counsel.

OPENING STATEMENT BY SENATOR DANFORTH

Senator DANFORTH. It is with deep feeling and firm determination that I begin this oversight hearing today. The National Highway Traffic Safety Administration [NHTSA] is responsible for administering three landmark statutes, the National Traffic and Motor Vehicle Safety Act of 1966, the Highway Safety Act of 1966, and the Motor Vehicle Information and Cost Saving Act of 1972.

Under these acts, NHTSA is required to establish safety standards, mandate compliance, undertake safety research, to order recalls, and provide consumers with information. Congress has charged NHTSA with a solemn obligation. Motor vehicle safety is of profound national importance.

Last year, over 46,000 people were killed in traffic accidents. Hundreds of thousands more were injured. NHTSA has one job and one job only, to stop the slaughter on our highways.

I am deeply concerned that the present administration has lost sight of this singular objective, and I am committed to doing everything in my power to get it back on the right track. Earlier this year I introduced legislation which would require, among other things, air bags, five-mile-an-hour bumpers, antilacerative windshields, and high mounted rear stop lights.

All of these are affordable, proven safety features. I introduced this legislation after holding 3 days of hearings which convinced me that NHTSA was failing in its mission to improve auto safety, and that the time had come for specific congressional direction, but NHTSA has the power to take these steps on its own, and today I plan to focus on what NHTSA is doing in each of these areas.

First, however, I want to address two NHTSA actions in which the agency has not only failed to move forward with improvements, but has actually turned back the clock by rescinding standards that were already in place. We are speaking of passive restraints and bumpers.

In introducing my bill on April 20, I asserted that passive restraints can play a vital role in improving highway safety. Just 2 months later, the unanimous Supreme Court voiced its wholehearted agreement. On June 24, the Court overturned the Department of Transportation's [DOT] rescission of the passive restraint requirement, calling the decision arbitrary and capricious.

These are mild words, as far as I am concerned. Had DOT not first postponed and then rescinded the passive restraint rule, every new car sold in America from this September on would have been equipped with either airbags or automatic seatbelts. Indeed, most cars would have been so equipped by September of last year.

According to DOT's own data, each year of delay has meant thousands of avoidable deaths and tens of thousands of needless injuries. Arbitrary and capricious, those are lawyer's words. In saying unconscionable, wrong, these words are closer to the truth.

It is too late to do anything about the delay and death that has gone before. The real question is what is to be done from this point on. As to that, one would think that there would be real hope. The Supreme Court has shown the agency the error of its ways. New leadership, not responsible for the rescission, the delay, the unnecessary loss of life, has taken over at DOT.

I should expect to be hearing promises of an end to delay, promises of fast action, promises to require implementation of passive restraints as quickly as possible, but that is not what I am hearing. Instead, I hear reports that NHTSA is not considering how to implement the rule, but rather, how to justify another rescission.

I read press reports that the Office of Management and Budget is interfering with agency decisionmaking, and I hear suggestions that new analyses, more studies, and more demonstration programs will be needed before passive restraints can be mandated.

Who is kidding whom? Passive restraints are not new gimmicks that need to be studied before we can make sure they will work. DOT first proposed a passive restraint rule in 1969. That was 14 years ago. Since then, over 10,000 cars have been equipped with airbags, and over 300,000 have been equipped with automatic seatbelts.

Those cars and their passive restraints have been studied and restudied ad nauseum. As long ago as 1976, President Ford's Secretary of Transportation, William Coleman, concluded that passive restraints are technically feasible, can be produced economically, and can be expected to prevent thousands of deaths and tens of thousands of injuries annually on the Nation's highways.

Professor William Nordhaus of Yale University has conducted a cost benefit analysis of the rule, and found that the passive restraint rule from an economic point of view is as important as any environmental health or safety rule on the books. In his view, recission is equivalent to repealing a law that cuts in half the homocide rate or foregoing the medical advances that allowed the virtual elimination of death from tuberculosis.

Moreover, those studies have not gone unexamined. Time and again the auto industry has attacked the value of passive restraints, and each time its arguments have been found wanting. Time and again, the industry has challenged the rule in both Congress and the courts, and each time it has lost.

The industry hired fancy, high-paid lawyers to come up with every conceivable argument to justify the rescission of the rule, yet they were unable to convince even one single judge of either the court of appeals or the Supreme Court that the rescission should be upheld.

As Justice White wrote for a unanimous Court; "For nearly a decade, the automobile industry waged the regulatory equivalent of war against the airbag and lost."

Let me state my position clearly. We do not need more studies. We do not need more demonstration programs. We do not need more delay. There is only one course for the Department responsibly and morally to take. It must order the implementation of the passive-restraint rule at the earliest possible date.

As for bumpers, I believe that the bankruptcy of recent NHTSA action is equally undeniable. The Federal bumper standard was promulgated pursuant to both the Safety Act and the Cost Saving Act, and in various forms has been in existence for more than a decade. During that time, nearly 100 million new car purchasers have received the dual benefits of 5-mile-per-hour bumpers, first, protection of important safety-related equipment, like lights, and second, savings, as much as $1 billion a year.

Despite these significant advantages, NHTSA announced that it had doubts about the benefits of the bumper standard. It proceeded to cut that standard back to 2½-miles per hour, about the speed of a slow stroll. As a result, we have returned to the days when bumpers were just ornaments.

Two points are important. First, it is clear that the price reductions promised by the auto industry never materialized. Second, the 2½-mile-an-hour bumper provides virtually no damage protection.

A study by the Highway Loss Data Institute indicates that NHTSA's estimate of how much more damage the 2½-mile-per-hour bumper would allow was off by 500 percent. The increased cost of a low-speed crash for a Honda Accord in one test was $575.

One very important consumer has disagreed with NHTSA's decision. That consumer is our own Federal Government. The General Services Administration looked at the evidence and decided that it wants nothing to do with 2½ mile-an-hour bumpers. It has decided that all of the cars which it purchases during 1984 must be equipped with 5-mile-per-hour bumpers.

Obviously, GSA knows a good deal when it sees it, but GSA has the market power to make such a choice. The average consumer does not. Thanks to NHTSA, it is the little guy who loses out.

There are many areas where the administration has done an outstanding job in cutting back the regulatory excesses of the past. I commend the administration for those actions. But NHTSA's rescissions on passive restraints and bumpers are perceived by the American public as anticonsumer and antisafety.

As a recent editorial in the New York Times put it, Transportation Secretary Elizabeth Dole has a chance to polish the Reagan administration's tarnished image on auto safety and prevent thousands of deaths. Will she take it? As a Republican Senator who has followed this issue closely for several years, I hope she does seize this opportunity.

I have an opening statement from Senator Hollings that will be printed in the record at this point.

[The statement follows:]

OPENING STATEMENT BY SENATOR HOLLINGS

I would like to commend Senator Danforth for the diligent exercise of his oversight responsibilities as Chairman of the Surface Transportation Subcommittee. Since January, 1983, the subcommittee has held 4 hearings on automobile safety alone and now this is the fifth day of hearings. As Chairman, it is clear that he has devoted time and attention to the National Highway Traffic Safety Administration (NHTSA) and to highway safety in general.

This hearing will focus on the extent to which NHTSA is fulfilling its mandate to reduce traffic accidents and deaths and injuries on the Nation's highways. Recently, NHTSA has been criticized by the General Accounting Office for its handling of a major automobile defect investigation. I would hope that the subcommittee would look into the questions raised by the GAO report.

Witnesses are also scheduled to discuss the Supreme Court's decision on the passive restraint standard. In that decision, the Court held that NHTSA's rescission of the passive restraint standard was "arbitrary and capricious." The passive restraint standard was first proposed by the Department of Transportation in 1969. Since that time it has been the subject of almost 60 notices of proposed rulemaking, hearings, amendments and the like. It is time for a final decision to be made on the standard and for that decision to be made expeditiously. I would urge the Department of Transportation and NHTSA to resolve the matter as promptly as possible within the framework set by the Supreme Court.

Other issues which will be addressed at the hearing today include strengthening automobile bumpers, changing the testing methodology on the side impact protection standard, use of new, non-lacerative windshield material, and the availability of crashworthiness data to consumers.

I am pleased that Congressman Tony Coelho of California will speak on behalf of the Epilepsy Foundation of America. Congressman Coelho's personal commitment to improving automobile safety is well known. The Committee will benefit from his testimony

Senator DANFORTH. We are delighted to have as the first witness today Congressman Coelho. Congressman, thank you very much for being here.

STATEMENT OF HON. TONY COELHO, U.S. REPRESENTATIVE FROM CALIFORNIA

Mr. COELHO. Thank you, Senator. I appreciate it very much. I want to join in your statement, which I thought was not only eloquent but very firm, and I appreciate your firmness in that. As chairman of the subcommittee, hopefully you can convince your colleagues of the need to go forward, and also hopefully you can convince the Department witnesses that are going to be testifying today of their need to finally obey the law and move forward, too.

I wanted to thank you also for the opportunity to speak in favor of S. 1108. As you know, I have supported and introduced several pieces of legislation in the House aimed at reducing the number of deaths and injuries which occur on our streets and highways as a result of automobile accidents.

Just a few months ago, I introduced a bill, H.R. 3250, which would establish national child-passenger-restraint requirements. Frankly, I am disappointed that after all these years of regulations, we still do not have automatic crash-protection equipment in all our new automobiles and child-passenger-restraint requirements.

The installation of automatic crash protection in each passenger automobile along with child-passenger safety seats and encouragement for States to combat drunk and drugged driving will drasti-

cally reduce death and injury due to automobile accidents. It will also save our economy and the Federal Treasury millions of dollars annually in medical bills and lost productivity.

Enactment of S. 1108 would help make automobile safety a reality, not just a slogan.

I am here today to share my personal views on this subject, as well as the views of the Epilepsy Foundation of America. As some of you may know, I am particularly interested in this issue, because I do have epilepsy, and it has almost certainly developed as the result of an automobile accident.

At the age of 15, I received a head injury in an accident. Shortly thereafter, I began having seizures. Were it not for the development of effective medication, many of us would not be able to function and be productive.

However, there are those who are not so fortunate. Available medication does not always work. The only fully effective treatment is prevention. We can prevent the onset of nearly half of the new incidents of epilepsy by reducing or preventing head trauma in automobile accidents.

Each year, approximately 20,000 new cases of epilepsy occur in the United States as a result of head injury, and many of these injuries are sustained in automobile accidents. Tragically, children are the most vulnerable to serious head injuries during a car crash.

The technology exists, however, to protect children and adults from most disabling injuries resulting from automobile accidents. According to the National Highway Traffic Safety Administration, 90 percent of child fatalities and 67 percent of serious injuries could be prevented by proper use of child safety seats.

The Center for Auto Safety has estimated that passive-restraint systems would save 9,000 to 12,000 lives annually, and prevent over 100,000 serious injuries. Unfortunately, these systems are not widely used. Among infants under the age of 1 year, only 32 percent are properly placed in child safety seats, and this decreases to 16 percent for children between the ages of 1 and 4. Likewise, only 11 percent of car occupants use manual seatbelts, according to a 1982 NHTSA study.

This bill, S. 1108, is needed to assure all future automobile occupants of reasonable protection in the event of an accident. We have the technology. It is economically sound, and it is sensible to do everything we can to protect ourselves from needless death and injury.

I urge you to pass S. 1108, and I will do everything I can to assure passage of similar legislation in the House.

Also, Senator, I would like to point out that not only as a Member of Congress, but as a member of the board of the Epilepsy Foundation, as I travel throughout the United States, and I do travel a lot now, I try to meet with epilepsy chapters wherever I go, and as I talk to individuals who have epilepsy, and who have epilepsy as a result of head injury from an automobile accident, it is a sad, sad thing that people from the Department of Transportation are not there with me to hear about their tales, to hear about what would have been prevented if only we would move ahead.

As a Member of Congress—this is my fifth year—I have testified each year urging that we move ahead, and each year we seem to

not have any progress. I would hope that with your position and the position of others on this committee, not only could we get this bill moving, but that we could change the attitude of people in the Department, and I assume that more likely people in OMB, who want to, in effect, put some type of cost effectiveness over human life and human value. If they could see what happens to the people that suffer as a result of these injuries, maybe they would have a different attitude and a different state of mind.

I sincerely appreciate your efforts in this regard, and many of us with epilepsy appreciate it very much.

Senator DANFORTH. Congressman, thank you very much for your very fine testimony, and also for your leadership in this area. Your bill and my bill really should not be necessary.

Mr. COELHO. That is right.

Senator DANFORTH. Because Congress should not be in the business of being a superregulator. The job we have is to set out basic policy, and then place the responsibility of executing that policy in the executive branch.

Do you believe that the National Highway Traffic Safety Administration in the last 2½ years has been complying with the basic mandate of Congress?

Mr. COELHO. No; I do not, Senator. As a matter of fact, I would even go further, and I would say that they are not only not complying, but they are doing everything that they can to disregard the act that we put into effect, and are in total violation of the law.

Senator DANFORTH. Do you believe that the National Highway Traffic Safety Administration today is a positive force for traffic safety, a neutral element in traffic safety, or that it is causing more damage than it is solving?

Mr. COELHO. I would go this far. I would say it is definitely not a positive. It is a negative. There is no way anybody could even say that it is anywhere near being neutral, and I would say that—and I know it is going to sound very strong—but that the administration is responsible for many injuries and many deaths that are occurring across this Nation, and many people having to suffer unnecessarily as a result of their attitudes and their actions, and they should be damned for it.

Senator DANFORTH. If passive restraints would mean saving 9,000 lives a year, and if passive restraints would have gone into effect on all cars this month but for the action of the National Highway Traffic Safety Administration, it would follow that the National Highway Traffic Safety Administration has by its action taken on the responsibility for deaths on the highway.

Mr. COELHO. I totally, totally agree with you, and if the National Highway Traffic Safety Administration is not interested in following through with the law, then we ought to abolish the agency. We have a beaucracy over there that is working to go against what this Congress has on several occasions stated was its position, and yet we have some people in a bureaucracy—in an agency—that are thwarting our will, and also making needless numbers of people suffer.

Senator DANFORTH. Congressman, thank you very much for being here this morning.

Mr. COELHO. Thank you, sir.

Senator DANFORTH. The next witness is Ms. Diane Steed, Deputy Administrator of the National Highway Traffic Safety Administration. Thank you very much for being here.

STATEMENT OF DIANE K. STEED, DEPUTY ADMINISTRATOR, NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION, ACCOMPANIED BY FRANK BERNDT, CHIEF COUNSEL, AND BARRY FELRICE, ASSOCIATE ADMINISTRATOR FOR PLANS AND PROGRAMS

Ms. STEED. Mr. Chairman and distinguished members of the committee, I am pleased to be here to discuss the activities of the National Highway Traffic Safety Administration.

Before summarizing my testimony, which I would like to do, because I assume it will be going in the record, let me introduce the gentlemen that I have brought with me today. To my right is Mr. Frank Berndt, who is chief counsel of the agency, and to my left is Mr. Barry Felrice, who is our Associate Administrator for Plans and Programs.

Let me begin, Mr. Chairman, by expressing Secretary Dole's strong personal interest in the subject of this hearing, and in highway safety generally. She would have been here herself, except that she is presiding at a ceremony downtown to honor outstanding members of the Department. That ceremony involves hundreds of people from all over the country and could not be rescheduled. She was sorry that she was unable to appear before you today.

Secretary Dole's commitment to safety is of long standing, and she has asked that I reaffirm today her commitment before you in the strongest terms. I am pleased that she has given me her charter to carry out this commitment in the area of highway safety.

In her view and in mine, the issues addressed today are part of a three-way approach to highway safety involving the driver, the roadway, and the vehicle. I look forward to restoring a balance between these approaches without stressing one at the expense of others.

We are now in a different climate, I believe, for safety, with a growing public awareness of safety, accident problems, and we are also seeing fewer fatalities on the road. I am pleased to report that fatalities are continuing to decline, with our data for the 12 months ending in July, showing a 6.1 percent decline from the preceding 12 months.

Let me turn to the specific topics that you have asked us to address today. These are in the forefront of NHTSA's present activities in the area of motor vehicle safety. We are, of course, aware that these topics also correspond to several of the sections in title 1 of S. 1108 as introduced by you, Senator Pell, and Senator Packwood.

As I proceed, I will therefore add such observations as we may have on the pertinent sections of your bill. Now, rather than just reading the rest of the testimony, let me briefly summarize:

Clearly of interest, as you have stated this morning, is the area of automatic restraints. This area was remanded to the agency in the recent decision by the Supreme Court. As you know, we have

not yet received the court remand, but we are already actively looking at this question.

We have stated publicly that the standard will be the subject of a renewed rulemaking by October 15. We are proceeding quickly and objectively to reexamine that standard. We intend to make a final decision as quickly as possible, and certainly within 1 year. I would anticipate that it would take significantly less time than that.

The bumper standard is in litigation. We are preparing supplemental briefs this week, as a matter of fact, in the court case. We are continuing as well to monitor what is happening in the bumper area, as we believe is required by statute.

In the area of side impact protection, we have been doing a considerable amount of work because we are very concerned about the number of accidents, injuries, and fatalities that involve side impacts. Our research to date has produced encouraging research about the performance of our new side-impact dummy and the movable, deformable barrier that we have developed to simulate a side-impact crash.

We are in the midst of a very, very intensive series of crash tests that will enable us to have confidence in the dummy that we have created, the barrier that we have created to simulate the crash, and the test procedures that we are now working on.

We are encouraged, as I said, by progress thus far. We see a number of improvements that could be made, but we do not yet have the data that would substantiate the issuance of a standard. We believe that we will have this research done probably by next spring, and we will take a look at a possible standard at that time.

Let me turn to truck occupant protection. Here we believe that a considerable amount could be done. Unfortunately, we have asked for funds in this area in the past and Congress has seen fit to cut back our request by about 75 percent, so we have been limited from a resource standpoint in what we can do in heavy truck safety.

Because of the small amount of funds, we have concentrated primarily on crash-avoidance activities. We are doing a number of projects in conspicuity, handling stability, and the usage of safety belts by truck drivers. We believe that there are a number of things that could be done in this area, and we plan to attack this significant problem on a number of fronts, including driver licensing, driver training, and a number of possible vehicle improvements. We will also be working with the States through such mechanisms as the improved National Driver Register, which you helped to enact last year. I believe you will be seeing a significant new approach in the area of truck safety.

Let us move on to the antilacerative windshield. Again, we have been at work for some time on a rulemaking. There is a growing interest, as evidenced both by consumers and by the auto companies, in plastic films that could be bonded to the inside of the windshield. We completely share your enthusiasm for the potential for injury reduction with this technology.

We anticipate completing our work on this important safety rulemaking this month. I would hope to be sending to OMB and to the Federal Register a positive regulation dealing with this subject. We are concerned that particular aspects of your legislation would limit the kinds of materials that might be used. We have some ex-

periments under way with a domestic manufacturer with a slightly different material that may offer the same injury protection. We would like to see the flexibility offered in the bill to permit other materials but again, we share your enthusiasm.

Consumer information on crashworthiness is another area that we believe is extremely important. We have devoted most of our work in this area to trying to get at the question of what those crash tests tell consumers. We are continuing to publish crash test data. We have taken a number of steps to make that data and the way we present it to consumers understandable.

The new car assessment program, which began in 1979, has had considerable positive results. As a matter of fact, when we first started those tests, about 20 percent of the cars were passing those tests. Now, as we continue to conduct them, we see about 80 percent of the cars passing. We see a number of specific improvements that were made by the auto companies, we think, in response to this program.

So, we believe the program is a good one. Again, we are not sure exactly what kind of a rating system we could put forth, but we are continuing to work to improve consumer information in this area. We are having a major technical meeting on what we can do to improve this program, and we are carrying forth this particular program with great vigor.

I might add that your bill also calls for the publication of a booklet for public consumption containing this and other safety information. I am pleased to inform you today that we have drafted and almost have in galley print such a publication. It will be called AutoWise, and it will contain a great deal of auto safety information to be made available to the public.

Our concern, as you probably know, with the old car book, was that we were republishing the same information, and as soon as we published it, it was out of date. What we are doing now is publishing a book of general auto safety information which we believe will be of help to the consumer, and supplementing the booklet with inserts, so that consumers will have up-to-date, as up to date as we can possibly make it, information on such subjects as fuel economy and crashworthiness.

Let me turn to the last area, which is high mounted stop lights. We began our rulemaking in January 1981, with a notice of proposed rulemaking. We conducted a number of tests to see what high mounted stop lights would do, and we are convinced that they do create a significant reduction in rear end collisions.

We have recently submitted a final rule concerning the installation of high mounted stop lights to the Office of Management and Budget for final clearance, and again, as I said, we are convinced that the tests show at least a 50-percent reduction in rear end collisions. We intend to promulgate that rule.

That pretty much concludes my remarks, Mr. Chairman. We would be pleased to try to answer any questions you have.

Senator DANFORTH. Thank you very much. Ms. Steed, with respect to passive restraints, the history is as follows. First, this administration rescinded the passive restraint rule. It lost a case in the court of appeals. It asked for a stay of the rule pending appeal.

It lost in the Supreme Court. It then announced that it was staying implementation of the rule for a year.

Now, it is believed by some that instead of announcing an implementation schedule or a procedure leading to an implementation schedule, the administration will reopen the whole passive restraint standard. Is it fair to say that delay has been a conscious tactic used by this administration with respect to auto safety rules?

Ms. STEED. To auto safety rules or to passive restraints in general?

Senator DANFORTH. Passive restraints in particular and auto safety in general.

Ms. STEED. I would have to say delay was not a conscious strategy or intent.

Senator DANFORTH. Is delay a strategy that is being consciously used by the administration with respect to passive restraints?

Ms. STEED. No, sir, it is not, and I would like to clarify something, because I know this is of concern to a number of people. Because the issues to be faced in the passive restraint rulemaking are so similar to the issues that we will probably discuss today, I am really not free to go into too much detail as to what the current thinking is.

However, let me say that every time I am asked about this question, my statements are quite likely to be taken out of context, and that concerns me. Let me give you a particular example.

I was speaking to a National Journal reporter not too long ago. The interview was on a wholly different subject, but it happened to be a couple of days after the Supreme Court decision came down. We were talking about what we might do, and I kept telling him it was just inappropriate for me to talk about this. However, I said I thought the Supreme Court decision did tell us one thing, and that is, do it right this time, take your time and do it right.

He interpreted that as meaning additional studies, additional delay, et cetera, and that concerned me greatly when I saw it in the magazine. In fact, it concerned me so much that I immediately wrote a letter to the magazine and made it very clear that that was an incorrect interpretation that could be taken out of context. It was, and within a couple of days it was used back in the court by parties on the opposite side of the issue.

So, I am very concerned about things that I say being taken out of context. I can assure you that we are not going to delay this, that we will move with all deliberate speed to reconsideration of this rulemaking, and we do not plan extensive new studies.

Senator DANFORTH. But with respect to passive restraints, the only time this administration has acted with speed was when it rescinded the rule. Is that not fair to say? I mean, in a very summary action it rescinded the rule, and since that time it has been doing everything that it can to drag its feet.

Ms. STEED. We rescinded the rule. That is correct. But we are also convinced that the technology works, and I am telling you today that we will not delay the reconsideration as ordered by the Supreme Court, that it will be as objective and as open, that we do not simply intend, as you indicated in your opening statement, to rerescind the rule. We are also working very hard to keep the technology alive.

Senator DANFORTH. You do not intend to rerescind the rule?

Ms. STEED. No; we are going to do a very objective, open reconsideration in line with whatever the court has told us.

Senator DANFORTH. But that could lead anywhere, correct?

Ms. STEED. It could consider a number of alternatives. What I am telling you is that we do not have a preconceived notion.

Senator DANFORTH. But what you do not intend to do is to set in place an implementation schedule?

Ms. STEED. We will set in place on October 15 a specific schedule for how we will conduct this rulemaking.

Senator DANFORTH. But not implementation of a rule itself?

Ms. STEED. Well, we have to consider a couple of alternatives, Senator, as ordered by the court. For example, we have to consider an airbag only standard. We also have to consider nondetachable belts. So I could not tell you today specifically what the outcome of the rulemaking would be.

Senator DANFORTH. Well, let me just read a couple of paragraphs from the August issue of Ward's Auto World, and ask you if this is incorrect.

> The Reagan administration, just as shocked as automakers at the new life breathed into airbags by a late June Supreme Court decision, remains determined to deflate the passive restraint requirement once and for all, and even if it fails, the White House is confident its renewed struggle will delay the mandate's implementation until late in the decade.
>
> "The administration plans to fight this challenge all the way," said a high-ranking aide to President Reagan. "If we lose, the worst that carmakers should expect might be an automatic seatbelt requirement some years down the road."

Now, is that portion of this article a fair statement of your administration's position?

Ms. STEED. Absolutely not.

Senator DANFORTH. Can you absolutely assure me and assure this committee that delaying the implementation of the passive restraint rule until some date at any distant future is not a conscious decision that has been made by the administration?

Ms. STEED. That predetermined conclusion has not been made, Senator. I intend to conduct a very objective, open rulemaking in line with what the Supreme Court told us.

Senator DANFORTH. But an objective, open rulemaking can go on for a very considerable period of time, can it not, and could lead to nothing?

Ms. STEED. I assure you that that decision will be made within a year, if not sooner.

Senator DANFORTH. How could it take a year? This has been going on since 1969. How could it possibly take a year?

Ms. STEED. I am just saying that is the outside time deadline. I expect us to finish the rulemaking much, much before that. It takes time to promulgate a notice of proposed rulemaking which, as we have said, we will do on October 15. We allow 60 days for public comment. There will be opportunity for public hearing. We will then have to go back and take a look at those comments and make the final decision and take a final action. So I do not anticipate it will take the full year. That is an outside time.

Senator DANFORTH. How long did it take to rescind the rule?

Ms. STEED. A year or less, I guess.

Senator DANFORTH. Much less. I think that it was a matter of, what was it, weeks? There were not any hearings. There were not any announcements. It was just rescinded.

Ms. STEED. It was rescinded in October, and I believe the first notice came out in February.

Senator DANFORTH. I would like to check that out for the record. I do not think it took that long.

Ms. STEED. There were, also public hearings.

Senator DANFORTH. As I recall, the length of time was less than 6 months. Is that right?

Ms. STEED. As I remember, and I do not have the dates with me today, we issued the notice of proposed rulemaking in April, and I think we revoked the requirement at the end of October, if I recall, the 27th or 29th.

Senator DANFORTH. From April to October, and as soon as the announcement was made in April, the automobile companies immediately began abandoning plans for implementing the rule. Is that not correct?

Ms. STEED. I believe that is correct, sir.

Senator DANFORTH. With respect to side impact protection, NHTSA under the past administration began a rulemaking, and that has been terminated. Is that not correct?

Ms. STEED. That is correct.

Senator DANFORTH. And instead of proceeding with the rulemaking, there has been a kind of a study period or some research operation going on? Is that not right?

Ms. STEED. Let me set the record straight. Yes, we had a rulemaking action out there, but the rulemaking action was an advanced notice of proposed rulemaking. Generally those are used as an information-gathering technique. At least that is the way I view them, as a way of saying we think there is a problem and asking public views on what should be done about it. We are not sure what kind of a rule might be appropriate, but we need some information, and that was the intent with the ANPRM.

We did withdraw that some time ago because we felt that there was significant information still needed, and having a rulemaking action out there, even though it was an advance notice, which is simply an information-gathering technique, held out expectations that we thought we were not ready to fulfill with a specific proposal.

In a program needing similar information, the new car assessment program, we have undertaken a series of very specific repeatability tests. Our concern was that the information we publish for consumers about the crashworthiness of cars is based on the crashing of one car, and if we were to repeat that very same test the very same day or even the following day, our concern was, would we get the same results?

So we began a new testing program of 16 cars, to see whether or not the results in the one test could be reproduced. We at the same time continued the new car assessment program, crashing one car, and publishing the results of those with some caveats to consumers that say this is an indication. We are not sure completely what it means.

I am a full believer in the new car assessment program, but I am also concerned about exactly what we tell consumers those results mean. So the reason we withdrew the rulemaking action was to take a look at the program, make some improvements in it, and move forward from there.

Senator DANFORTH. Well, I certainly agree that you have stepped back. The rulemaking was instituted in December of 1979, and it is now September 1983. So that is correct. You have stepped back.

I am going to include this article from Ward's Auto World in the record.

[The article follows.]

[Ward's Auto World, August 1983]

DESPITE SUPREME COURT RULING, AIRBAG FIGHT WILL CONTINUE

(By John E. Peterson)

WASHINGTON.—The Reagan Administration, just as shocked as automakers at the new life breathed into airbags by a late-June Supreme Court decision, remains determined to deflate the passive-restraint requirement once and for all. And even if it fails, the White House is confident its renewed struggle will delay the mandate's implementation until late in the decade.

"The Administration plans to fight this challenge all the way." says a high-ranking aide to President Reagan. "If we lose, the worst that carmakers should expect might be an automatic seat-belt requirement some yards down the road."

The decade-old battle took its latest turn when the high court, by a unanimous vote that stunned constitutional-law experts, upheld a 1982 U.S. Court of Appeals ruling that overturned rejection of the passive safety rule by the National Highway Traffic Safety Administration. Justices agreed that NHTSA's October 1981 decision on the eve of the regulations's effective date was "arbitrary and capricious."

But as it has so often in the past, the Burger Court sidestepped the chance to establish sweeping legal precedent, ruling only on narrow procedural grounds. Rather than addressing the key constitutional question of whether an administration may set aside rules promulgated by its predecessor—NHTSA ordered passives in 1977 under then-President Carter—the nine justices merely endorsed the lower court's finding: The agency's rescission of the standard was supported by too little evidence.

Despite the jubilant rhetoric of car safety activists and the insurance industry on the decision's wake, the Supreme Court thus merely invited the government to try again. It gave NHTSA the same options first suggested by the Appeals Court: Give up and let the standard take effect, or alter, suspend or even throw out the requirement—as long as it comes up with better reasons for doing so.

In originally revoking the standard, the Reagan Administration had contended events simply had overrun the passive-restraint technology envisioned in June 1977, when former Transportation Secretary Brock Adams issued the regulation.

Soaring costs, doubts about safety and reliability and the wholesale downsizing of cars (also decreed by the federal government) had made the airbag both prohibitive and passed reasoned Raymond A. Peck, NHTSA Administrator when the rule was abrogated. Automatic safety belts, while considerably less costly and bulky, would have to be easily detachable to allow for quick evacuation of motorists after crashes in which a chance of fire existed.

Once detachable, NHTSA argued, automatic seat belts likely would fall into the category of the ignition interlock—utterly abandoned by most Americans. Given that, NHTSA said, automatic belts might not enjoy much more use than the effective manually operated belts already in cars.

The court, particularly Justice Byron White, gave short shrift to arguments the Administration used.

Justice White, speaking only for himself in the opinion he drafted, called the airbag "more than a policy alternative to the passive-restraint standard. It is a technological alternative within the ambit of the existing standard." He added that he felt airbags were "an effective and cost-beneficial lifesaving technology," and thus "the mandatory passive-restraint rule may not be abandoned without any consideration whatsover of an airbags-only requirement."

A top White House official pledges that the Administration "will scrupulously adhere to all guidelines handed down by the court for our review of the standard." But, he adds, the government is no less determined to scotch the regulation.

Fears expressed by some in the auto industry that the Administration's response will be delegated to new Transportation Secretary Elizabeth Hanford Dole—viewed in some quarters here as a closet Naderite—are groundless, the aide assures. "Mrs. Dole's marching orders on this one will be cut by the Vice President's task force on regulatory relief," the official explains, noting economists at the Office of Management and Budget (OMB) now are drafting better arguments for rescission at the request of the task force.

The OMB experts, after reviewing NHTSA's original arguments, are less than impressed with the logical consistency—or lack of it—shown by Mr. Peck, who resigned last spring amid Congressional criticism of NHTSA's ebbing regulatory activism.

"He started off all right," says one, "but then began to violate the maxim first articulated by the ancient Greeks and then refined by Henry Ford II—'never explain'—or at least, 'never explain too much.' That was one of Peck's big problems. He rescinded the airbag standard and then started talking about how he considers them effective and would prefer one on his own car. Then, in his next breath, he reviews the government's airbag demonstration program. He didn't know when to shut up."

It's uncertain when the Administration will respond to the Supreme Court decision and what it will do to ease or abolish the standard. In any case, the next steps will be time consuming.

The Supreme Court was scheduled to return the case to the Court of Appeals late last month, provided the government and automakers had not sought a rehearing. The lower court then will pass the case back to the Dept. of Transportation for action consistent with the justices' ruling. How far the lower court intervenes to hasten the review remains to be seen, but DOT must expeditiously give notice of how it intends to proceed.

Interested parties probably will have up to 90 days to respond to DOT's notice. Considering their comments and any additional evidence it gathers, DOT then would issue a final decision. Any dissatisfied party could appeal to the appeals court.

Senator DANFORTH. I want to ask you about how decisions are made by the administration with respect to auto safety, and let me just read again a paragraph or so from this article.

Fear is expressed by some in the auto industry that the administration's response will be delegated to new Transportation Secretary Elizabeth Hanford Dole, viewed in some quarters here as a closet Naderite, are groundless, the aide assures, that is, the White House aide assures.

Mrs. Dole's marching orders on this one will be cut by the Vice President's Task Force on Regulatory Relief, the official explains, noting economists at the Office of Management and Budget, OMB, now are drafting better arguments for rescission at the request of the task force.

Now, let me just give you what I guess, and it is not entirely a guess, it is the position that is taken by this writer, and it is also what I have gathered from talking to various people in the administration. I think that Secretary Dole is committed to auto safety, and I have every reason to believe that you are, too, but I believe that the Office of Management and Budget is the decisionmaker. I believe that your rules have to be run by OMB, and that OMB really makes the decisions on auto safety. I believe that OMB has taken an ideological position against major safety regulations, and therefore that it is the major player in this piece, and that it has preempted decisionmaking at the Department of Transportation. Could you comment on that?

Ms. STEED. I do not believe that is true, Senator. I know that is what the Ward's Automotive article says, and as a matter of fact, I would love to know who the official is who made those statements. Absolutely no one has predetermined the result as far as I know,

as far as the Secretary knows. We are handling this regulation and all regulations as we always do; that is, we do a full professional, technical analysis of the problem, put forth our best information, and make the decision on the best way to solve the particular auto safety problem whether it is through a regulation, additional research, or other techniques.

I or the Secretary make those decisions. We do run major regulations by the Office of Management and Budget, as is required, but to the best of my knowledge there has been no predetermined outcome of this particular rule or any particular auto safety rule. I think you may want to ask that question of the OMB representative who comes.

I asked him, as a matter of fact, about the Ward's article. He, too, does not know where the statements came from. But we can guarantee you there has been no predetermined decision on passive restraints or any other auto safety——

Senator DANFORTH. Would it be fair to say that the White House has a philosophical position with respect to passive restraints?

Ms. STEED. I think you can make that statement.

Senator DANFORTH. And that regardless of whatever is the position of the Department of Transportation, or people at NHTSA, you know good and well that the administration is going to take the position that it does not want a passive restraint rule?

Ms. STEED. I do not think that they would say or I would say that that final decision has been made, because I have made it very clear, as has the Secretary, that this is an open and objective rulemaking process, that no predetermined——

Senator DANFORTH. Is it not well known that as long as President Reagan is in the White House, there will be no passive restraint rule?

Ms. STEED. I think that is a common perception. I know of no reason personally that I could make that flat-out statement. I do believe it is a public perception.

Senator DANFORTH. Do you agree with that perception?

Ms. STEED. I would have to say, no; I do not. I would have to say that I think if the agency can make a good case, that people are open to the outcome of the regulatory process. I certainly have had no direction one way or the other, nor has the Secretary.

Senator DANFORTH. Meaning what, that you have not received any letter to that effect?

Ms. STEED. That I have spoken to no one.

Senator DANFORTH, Well, I thank you for being here. I really believe that the situation is that there is a philosophical opposition on the part of the administration to safety regulations, and that the approach of the administration, really, regardless of the facts, is that it wants to terminate rulemakings where it can, delay the implementations of rulemakings where it can, unless what it is doing is backtracking an existing rule, such as the 5-mile-an-hour bumper, and I do not blame you, and I do not blame Secretary Dole. I know Secretary Dole, and have known her for a number of years, and I have a very great respect for her, and I truly believe that she wants to further the cause of auto safety. She so stated in her confirmation hearing in the opening minutes of that hearing.

She took the initiative, and brought out her concern for auto safety.

But I think that it is irrelevant in this administration what the DOT might think on auto safety. I think that this is a philosophical position which has been taken in the White House, and that is that, and I think that the unfortunate result of that is that people are dying, that lives are being lost, that the administration is not just taking a neutral position on auto safety, but it is dismantling things that have already been agreed to, dismantling things that have already been done, and the result of that is that lives are being lost, and with respect to the bumper standard, people are shelling out money they should not have to shell out.

When we talk about cost effectiveness, what is cost effective about an ornamental bumper? I mean, that is not a question of whether we have a rule or not. I suppose ideologs could say, well, we do not want any regulations. If you are going to have a regulation, you should at least have a good one, not an ornamental bumper, not something that is little more than trim on a car.

So the reason I am proceeding with this legislation is not that I enjoy seeing my name on a bill, but I have given up on the administration. I think that we are going nowhere on it. I can tell you that in the bill that I have introduced, we have had, I guess, 3 or 4 days of hearings on it, and the general position of the administration is negative to everything, virtually everything in the bill.

The drunk-driving portion of the bill, it is my understanding that the President would veto it. Is that correct?

Ms. STEED. That is my understanding, not on programmatic grounds, but beause of the new categorical grant program.

Senator DANFORTH. OK. Thank you very much for being here, Ms. Steed.

[The statement follows:]

STATEMENT OF DIANE K. STEED, DEPUTY ADMINISTRATOR, NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

Mr. Chairman, distinguished members of the Subcommittee, I am pleased to be here to discuss the activities of the National Highway Traffic Safety Administration (NHTSA). Accompanying me are Frank Berndt, Chief Counsel for NHTSA, and Barry Felrice, the Associate Administrator for Plans and Programs.

Let me begin by expressing Secretary Dole's strong interest in the subject of this hearing and in highway safety generally. She would have been here herself, except that she is presiding at a ceremony downtown to honor the outstanding employees of the Department. That ceremony involves hundreds of people from all over the country and could not be rescheduled.

Secretary Dole's commitment to safety is of long standing and she has asked that I reaffirm her commitment before you in the strongest terms. I am pleased that she has given me her charter to carry out this commitment in the area of highway safety. In her view, the issues addressed today are part of a three-way approach to highway safety involving the driver and the roadway as well as the vehicle. I look forward to restoring a balance between these approaches, without stressing one at the expense of the others. We are now in a different climate for safety, with a growing public awareness of safety and fewer fatalities. I am pleased to report that fatalities are continuing to decline, with our data for the 12 months ending in July showing a 6.1% decline over the preceding 12 months.

The specific topics you have asked us to address today are in the forefront of NHTSA's present activities in the area of motor vehicle safety. We are of course aware that these topics also correspond to several of the sections in Title I of S. 1108, as introduced by you with Senators Pell and Packwood. As I proceed I will therefore add such observations as we may have on the pertinent sections of your bill.

AUTOMATIC RESTRAINTS

Of considerable interest, clearly, is the question of automatic restraints. The Committee is familiar with the decision of the Supreme Court in *Motor Vehicle Manufacturers Association* v. *State Farm Insurance Co.,* in which the court found that NHTSA's rescission of the automatic restraint requirements in Motor Vehicle Safety Standard No. 208 was arbitrary and capricious. The court directed the Court of Appeals to remand the matter to NHTSA for further consideration consistent with the Supreme Court's opinion.

We have not yet received the remand from the Court of Appeals. Nevertheless, we intend to review this matter thoroughly under the guidance provided by the Supreme Court and have begun the necessary steps to reconsider the rulemaking on the standard. By notice of August 31, 1983, we directed the suspension of the automatic restraint requirements from September 1, 1983, to September 1, 1984. We took this step as a procedural precaution to resolve any possible ambiguity, even though the likely effect of the Supreme Court's vacating of the Court of Appeals' judgment was to leave the effective date of the automatic restraint requirements in rescission pending further agency review.

At the same time, we are conducting an expedited review of the Standard pursuant to the court's opinion. As stated in the notice, we intend to issue a notice of proposed rulemaking by October 15, 1983, and to reach a final decision well before the end of the one year suspension. At that time, we will establish an appropriate effective date for any action that we take.

Without being able to speak to the outcome of this rulemaking process, I want to assure you that the Department regards this issue to be of the highest importance to the safety regulatory program. Apart from the rulemaking action, we are continuing to examine passive restraint technology, through projects involving the retrofitting of airbag systems and the evaluation of alternative technologies, and through the purchase of air bag equipped vehicles by the General Services Administration.

BUMPER STANDARDS

In 1982, NHTSA concluded its rulemaking on the bumper standard by reducing the impact speeds from 5 mph to 2.5 mph, on the basis of its findings that the 5 mph speed did not yield the greatest net economic benefit to consumers and that the reduction would not adversely affect safety.

The agency's final rule was immediately challenged in petitions filed with the Court of Appeals by two insurance companies and the Center for Auto Safety. The litigation is still in process, with oral arguments likely to be held sometime this fall. We have filed our initial brief in the case, and are currently preparing a supplemental brief in response to the Court's request for our analysis of the effects of the Supreme Court's decision in the automatic restraint case.

In the meantime, NHTSA is continuing its full-scale evaluation of the bumper standard. We are spending, exclusive of staff time, one million dollars on this evaluation. We will be gathering new data on bumper costs, weights, and effectiveness. I want to assure the committee that we will follow the evaluation wherever it takes us. If the data do not support the current rule, we would be prepared to undertake new rulemaking.

The provision relating to bumpers in S. 1108 would dictate an impact speed of 5 mph, thereby incorporating the old bumper standard law. We would object to the rigidity of this process, even if we believed 5 mph to be the appropriate speed. Such a legislated speed would severely curtail the agency's ability to adjust the standard to meet the best current data, and could stifle innovation in the automobile industry by serving as a ceiling, rather than a floor, on bumper performance.

SIDE IMPACT PROTECTION

As part of its comprehensive research program on occupant protection, NHTSA has conducted a number of projects on side impact protection. The projects currently underway are designed to examine whether we can manage energy in side impacts and improve safety by using a more realistic test. Our research to date has produced encouraging data about the performance of our new side impact dummy and the moving deformable barrier that we have developed to simulate a striking vehicle. We are currently in the midst of a series of 30 side impact tests to evaluate these test devices and the test procedures we have developed in full systems tests of modified vehicles. We expect to get preliminary results in March of 1984.

The development of a new standard for occupant protection in side impacts must wait the conclusion of basic vehicle research. We are encouraged by our progress thus far, and look forward to the issuance of rulemaking in the future, but we do not yet have the data necessary to devise such a standard, and do not expect to have such data before the date that S. 1108 would have us issue a final rule to require dynamic crash tests.

TRUCK OCCUPANT PROTECTION

Although the truck accident data in recent years shows a downward trend in the incidence of serious and fatal injuries to truck occupants, about 1,000 will die each year. This remains a subject of serious concern. Much of our work on trucks has been directed to the aggressive nature of trucks in accidents with smaller vehicles. We have, therefore, focussed on breaks, lights, and other accident avoidance features. It is time, we believe, to make a major push on the safety of truck occupants. We tried to maintain the level of funding for research on truck safety in fiscal year 1983, but Congress reduced our funding by 75 percent. Funding will remain at this reduced level in fiscal year 1984, and does not presently permit significant research on occupant safety.

Based on recently completed research, we were able to make several general observations about occupant protection, notably about safety belt usage, steering wheel design, and cab structure. Our current estimate is that only 6 percent of truck occupants wear safety belts, compared with 14 percent of occupants of other vehicles. An increase in belt use would seem to be the most readily available means to improve occupant safety, and we are exploring this and other ways of improving truck occupant safety.

There may well be benefits from examining additional aspects of occupant protection, such as improvements in steering wheel design and in the strength of the cab structure. This would complement our efforts to improve truck safety through helping the states to detect problem drivers in their commercial licensing process. We plan to work closely with the teamsters to identify ways to improve truck occupant protection. We would, therefore, support the provision of S. 1108 relating to truck occupant protection.

Under this Committee's leadership last year, the Congress enacted landmark legislation to make long needed changes to the National Driver Register (NDR) to allow it for the first time to fulfill the need for immediate information on drivers. During the development of the system to implement the Act, we have taken other measures to improve service. Through the use of telephone lines, the NDR can now give the states the option of processing inquiries and updating files within 24 hours.

ANTILACERATIVE WINDSHIELDS

We have been at work for some time on rulemaking that responds to the growing interest in plastic films that can be bonded to the inside of windshields to reduce facial lacerations in crashes. We completely share your enthusiasm for the injury potential of this technology. The agency issued a notice of proposed rulemaking on March 10, 1983, and has substantially completed its analysis of public comments on that notice. In proposing a rule, the agency sought to permit a variety of materials to be used. Although to this point only a polyurethane-based film produced by a French company seems ready for the market, we have given General Motors approval to produce 550 test cars with windshields bonded by a domestically-developed alternative process. We anticipate completing our work on this important safety rulemaking this month.

Although the type of antilacerative windshield prescribed by S. 1108 would presumably comply with the performance requirements of the proposed rule, the bill would exclude materials other than polyurethane which might offer equivalent protection. As we noted, a domestic company has developed an alternative technology which does not use polyurethane, and therefore, could not be used to satisfy the statutory requirement. Also, because the language is so restrictive, we would oppose this limitation in the bill. With only one foreign company presently prepared to market such windshields, the manufacturers would not be able to equip all vehicles by September 1, 1984, and we therefore prefer to deal with those issues through a responsive safety rulemaking.

CONSUMER INFORMATION ON CRASHWORTHINESS

During the last year, NHTSA has devoted most of its work in the area of comparative crashworthiness to the question of repeatability. The New Car Assessment

Program, which began in 1979, had published test results from a single crash test of each model selected for testing. We have observed a significant improvement in performance during the program. In 1982, for example, Honda, Nissan, Toyota, and Volvo each showed dramatic improvements over earlier years, as did General Motors in its smaller cars.

To address a widespread concern about the repeatability of these results, NHTSA began a testing program in November 1982 to examine the crash data from a series of tests of identical vehicles. In hopes of distinguishing between variations due to the test procedures and variations due to the cars, the agency tested four or more cars at each of three laboratories. All cars were 1982 Chevrolet Citations with identical equipment assembled at one assembly plant. General Motors, on its own, tested an additional 6 cars of the same type.

The significance of the variations found in these tests is to be the subject of a public meeting to be held by NHTSA in Ann Arbor on October 11 and 12, 1983. I have attached a copy of the notice issued by NHTSA[1] on August 30 to announce this meeting. In the notice you will find a copy of the results from the 20 cars tested.

The agency is hopeful that the meeting will shed light on the source of the variations and on possible means to reduce the variations. As you can see from the notice, NHTSA has already outlined several approaches to resolving these questions and intends to pursue these approaches over the next two years.

One of the products of the October meeting will be information that we can use in a report to Congress, pursuant to the direction of the House Appropriations Committee by January 31, 1984. We will be pleased to submit a copy of our report to you at that time.

The agency remains committed to the new Car Assessment Program, and to the principle that consumers should be informed about the relative crashworthiness of their cars. We believe the program has produced results. Overall, 80% of the vehicles tested in 1982 performed well; in the program's first year, only 20% of the vehicles performed well. However, until the test methodologies are further refined the administration will oppose any effort to promote a misleading appearance of precision through numerical ratings.

HIGH-MOUNTED STOPLAMPS

NHTSA began rulemaking on center high-mounted stoplamps in January 1981, with a notice that proposed to require such stoplamps on all passenger cars. The agency based its proposal on two field tests which showed that vehicles equipped with center high-mounted stoplamps were struck from behind as less frequently than vehicles equipped with only conventional stoplamps. One test showed a 53 percent reduction, and the other a 55 percent reduction. We have recently submitted a final rule concerning the installation of center high-mounted stoplamps to the Office of Management and Budget for final clearance.

S. 1108 would also require a standard on high-mounted rear stoplamps with an effective date of September 1, 1984. This date would be virtually impossible for the manufacturers to meet. We believe that our rulemaking process will adequately meet the need for motor vehicle safety in this area.

Mr. Chairman, this concludes my prepared remarks. I have alluded to a number of additional documents which we can provide for the record if you wish. I would be pleased to try to answer any questions you may have.

[The following information was subsequently received for the record:]

U.S. DEPARTMENT OF TRANSPORTATION,
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION
Washington, D.C. Nov. 17, 1983.

Hon. BOB PACKWOOD,
Chairman, Committee on Commerce, Science, and Transportation,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: In response to the questions submitted by the Commerce Committee minority after the September 13, 1983, hearing, I am pleased to provide the following answers:

---

[1]See Federal Register vol. 48, no. 173, Sept. 6, 1983, pp. 40339–42.

Question 1. The Periodic Motor Vehicle Inspection (PMVI) is a continuing effort by most States to require the inspection of automobiles for defects which might cause accidents and injuries. Thirty-seven States currently require some type of inspection for safety of motor vehicles registered there. It is also my understanding that NHTSA has supported the concept of PMVI inspections through educational and informational efforts. Does NHTSA still support the idea of periodic motor vehicle inspection at the State level?

Answer. We continue to provide information and technical assistance to the States about periodic motor vehicle inspection, but other programs show more promise for reducing fatalities and injuries. If an individual State submits data indicating tht it is experiencing a significant accident problem that can be mitigated by inspection, we can approve funding, but we prefer that the States fund their programs through fees. In the last few years, 10 States have ended their inspection programs, reducing the total to 21 States, the District of Columbia, and Puerto Rico.

Question 2. Has NHTSA conducted any studies regarding the effectiveness of PMVI in avoiding accidents or reducing the severity of injuries?

Answer. The only work done by NHTSA on the effectiveness of inspection was during a diagnostic inspection project at Huntsville, Alabama, in which our contractor compared the accident experience of the inspected vehicles over a two-year period with the experience of a control group of vehicles. The vehicles inspected in this project received a much more rigorous inspection than vehicles in standard periodic inspection programs. The study showed about 9 percent fewer accidents for the inspected group, but we could not determine how much of the difference was directly attributable to the inspection and how much to the greater safety awareness of those who had volunteered their cars for inspection.

Question 3. In the past there have been several studies by private groups and also by the State of New Jersey regarding the effectiveness of PMVI programs in avoiding accidents or reducing their severity. Has NHTSA done any evaluation of these private studies or State studies to determine their validity? Does the Administration believe that periodic motor vehicle inspection is an effective method of reducing automobile accidents?

Answer. We are aware of a number of studies which differ among themselves on the value of inspection. In our view they fall short of documenting the need for a national inspection program, but we have never subjected them to rigorous evalution. We believe that such an evaluation would be worthwhile, however, and we intend to review them and any other current data during this fiscal year. As suggested in our answer to Question 1, we are open to any data suggesting that a program is effective in a given State, but we have strong reservations about motor vehicle inspection as a national program.

Sincerely,

DIANE K. STEED, *Administrator.*

Senator DANFORTH. Next is Mr. Christopher DeMuth, Administrator for Information and Regulatory Affairs of OMB.

VOICE. Senator, he is on his way, but he is not here yet.

Senator DANFORTH. He is on his way.

Is Mr. Kelley here? Mr. Ben Kelley, senior vice president, Insurance Institute for Highway Safety.

STATEMENT OF BEN KELLEY, SENIOR VICE PRESIDENT, INSURANCE INSTITUTE FOR HIGHWAY SAFETY

Mr. KELLEY. Thank you, Senator.

I am appearing today in response to the subcommittee's request for information about the Insurance Institute for Highway Safety research results involving automatic crash protection and automobile bumpers.

At subcommittee hearings in February and March of this year, we testified at your invitation concerning the effect of weakened bumpers and Federal bumper standards on low-speed, crash-damage costs to American carowners and insurers. We also testified concerning technologies developed by the auto industry during recent decades to very substantially reduce the severity and frequency of injuries in motor vehicle crashes.

Technology is still being largely withheld from the general public. We gave particular attention to automatic crash cushions, so-called airbag technology.

At your invitation, I am here today to update those earlier presentations. First, as to bumpers and low-speed crash damage, as we said in concluding our February 17 testimony on the subject, the early evidence strongly suggests that the only noticeable consequence of the weaker bumper standard will be significantly increased consumer costs for repairs as cars sustain greater damage in the low-speed impacts that sooner or later involve virtually all carowners.

Time and subsequent evidence have strongly underscored the accuracy of that February conclusion.

Attached [1] to this testimony are institute findings published since the February hearing and bearing on the bumper issue. I will not recapitulate them here for you, but each one of them very strongly substantiates the conclusion that the consumer is being taken for a very unpleasant ride by the weakened bumper standard. These will all be available, of course, for the record of the hearing.

At the February hearing, we provided the subcommittee with crash test film and published repair cost results, showing dramatic differences in damage resistance and estimated repair costs between cars with 5-mile-an-hour bumpers and comparable cars with 2½-mile-an-hour bumpers, and that is also attached to this testimony.

Today we are releasing results from one more recent low-speed crash test series. These are particularly important because they show the clear superiority of 5-mile-an-hour bumpers from a consumer standpoint, reflecting one major manufacturer's decision to give its customers better bumpers on the new cars it makes and sells, despite the NHTSA's weakening of the Federal bumper standard to 2½ miles an hour.

That manufacturer is Ford Motor Co., and in a moment we will see a film clip that underscores the benefits to Ford purchasers of that manufacturer's decision. We will see the bumper performances of two current-model cars in a series of low-speed impact tests as follows.

First, the 1984 Ford Tempo. The Tempo and its companion model, the Mercury Topaz, are Ford Motor Co.'s newly introduced competitors in the critically important subcompact car market. In terms of size, price, and overall market class, these cars are directly competitive with the very successful Honda Accord. According to Ford sales material, the 5-mile-an-hour bumpers on the Topaz and Tempo can withstand twice the impact speed that is required by the Government.

I have for the record an even more recent Ford ad which discusses Ford's commitment to advancing the state of the art of automotive safety and states, "Ford Motor Co. is the only," underscore "only," automotive manufacturer of the big three to equip every car with damage-resistant 5-mile-an-hour bumpers front and rear.

---

[1] The attachments are in the committee files.

The other car we will look at is the 1983 Honda Accord. The 1982 Accord was equipped with 5-mile-an-hour bumpers, as required by the then effective Federal bumper standard, which you saw in an earlier hearing, and that design greatly minimized damage in our low-speed crash test series, but when it so weakened the bumper standard to 2½ miles an hour, Honda was one of the first manufacturers to degrade the performance of its bumpers. Starting with the 1983 models, Accords and Civics have given their owners substantially reduced 2½-mile-an-hour protection, and as a consequence, greatly increased exposure to costly damage and high repair and replacement bills when those cars get involved in even very minor impacts.

We will see now a split screen filmed version of the 1984 Ford Tempo bumper built to the 5-mile-an-hour standard, and the 1983 Honda Accord bumper, built to the Government's present 2½-mile-an-hour standard, a comparison of two cars that are in head-to-head competition in the American new car marketplace.

If we may have that film, please.

At the top of each of these series of panels, we will see the 1984 Ford Tempo with its 5-mile-an-hour bumpers, and at the bottom we will see the 1983 Honda Accord with the 2½-mile-an-hour bumpers, and the evidence speaks for itself.

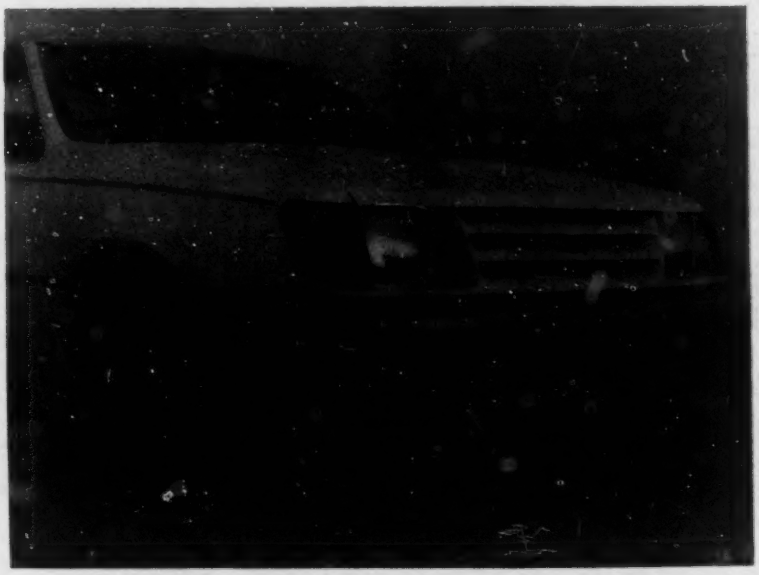
[Whereupon, a film was shown.]

Mr. KELLEY. Here, the Ford Tempo, zero dollars damage in a 5-mile-an-hour front-into-flat-barrier impact, Honda Accord, $305 worth of damage. In a 5-mile-an-hour angle barrier, a much tougher test, the Tempo, a little over $300; the Honda, over $900.

In the 10-mile-an-hour flat-barrier test, the Tempo, $622; the Honda Accord, $1,445. Five-mile-an-hour rear-into-barrier test, zero dollars for the Tempo; $207 for the Honda Accord. And finally, in the 5-mile-an-hour rear-into-pole test, a very typical parking lot kind of incident, zero dollars for the Tempo; the Accord, in a visually very informative picture, $782 worth of damage.

5 mph Front-into-Barrier Crash Test

Insurance Institute for Highway Safety



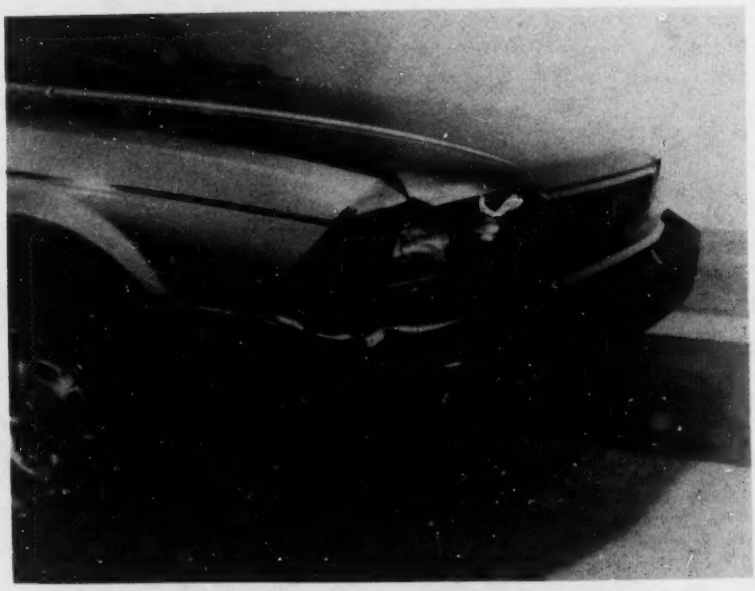
1984 Ford Tempo with 5 mph bumpers, $0 damage

1983 Honda Accord with 2.5 mph bumpers, $305 damage

5 mph Front-into-Angle-Barrier Crash Test

Insurance Institute for Highway Safety

1984 Ford Tempo with 5 mph bumpers, $309 damage



1983 Honda Accord with 2.5 mph bumpers, $916 damage

10 mph Front-into-Barrier Crash Test

Insurance Institute for Highway Safety

1984 Ford Tempo with 5 mph bumpers, $622 damage

1983 Honda Accord with 2.5 mph bumpers, $1,445 damage

5 mph Rear-into-Barrier Crash Test

Insurance Institute for Highway Safety

1984 Ford Tempo with 5 mph bumpers, $0 damage

1983 Honda Accord with 2.5 mph bumpers, $207 damage

5 mph Rear-into-Pole Crash Test

Insurance Institute for Highway Safety

1984 Ford Tempo with 5 mph bumpers, $0 damage

1983 Honda Accord with 2.5 mph bumpers, $782 damage

Thank you. If we may have the lights, please.

The total estimated repair costs for the Ford Tempo across the series of five low-speed crash tests we have just seen was $931. That is the Tempo in the sum of all those tests. For the Honda Accord, the repair cost in that series was $3,655, almost four times as much as the Tempo's. For owners and prospective purchasers of Ford Tempos or Honda Accords, the message could not be clearer.

Turning now to the continued absence from American automobiles of automatic restraint protection technology, our testimony at the subcommittee's March hearing explored the issue in detail. Since then, the Supreme Court in a June decision rejected the U.S. Department of Transportation's attempt to scrap its passive restraint standard in a decision that you have already described very eloquently this morning.

Press coverage of the Court decision has been widespread. I have attached some of that to this testimony today for your record, and this includes press coverage that expressed concern that the department may fail to move expeditiously to wrap up this rulemaking.

The concern would be dispelled if the Department of Transportation were, for instance, to adopt a firm timetable along the lines suggested to it in a filing last week by State Farm Mutual Automobile Insurance Co., one of the parties to the Supreme Court proceeding. That timetable, passed to Secretary Dole by State Farm as part of the docket, would assure that at long last the American public could look forward with certainty to a final resolution of this rulemaking in favor of the public.

Continued delay in reaching that resolution will mean, of course, continued needless death and severe injury in car crashes for additional hundreds of thousands of Americans.

Had airbags, for example, been provided as standard equipment on all new cars from the point in time that the technology was clearly feasible for application, 1970 or even earlier, thousands of lives would have been saved annually in highway crashes this year, last year, and the year before, and hundreds of thousands of serious injuries would have been minimized or prevented.

Each year's additional delay in the application of the passive restraint standard defers yet further the achieving of such health benefits for Americans, and in doing so costs the public and the Government billions of dollars in medical costs, lost productivity, and expenditures for rehabilitating damaged people.

Limited projects for equipping a few thousand Government cars with passive restraints are fine as far as they go, and the General Services Administration is to be commended for its current plan to seek driver side airbags for some of its future new cars, about 5,000 cars, we understand, but what about the rest of America? How long must it wait for the needed protection in car crashes? How many more of us must needlessly be killed or crippled?

Not as a part of my prepared statement, Mr. Chairman, but at the subcommittee's request subsequent to my drafting this statement, I have brought with me two sets of exhibits. One of those is a group of automobiles which are parked on the C Street side of this building. Three of the cars were made by General Motors in the mid-1970's and equipped with airbags. Those cars underwent very,

very violent crashes, in which the airbags performed so effectively that the people inside literally walked away with little or no injury. The cars speak for themselves. I think that anyone who wants to know what an airbag can do for you in a crash will want to come outside and see those cars, along with cars that demonstrate how airbags work and how they look in today's small cars. Also, I have attached to this statement [2] photos of the crashed cars and descriptions of the crashes.

I will be happy at your invitation to show that after the hearing.

Senator DANFORTH. Thank you. I think we will wait until the last witness has testified.

Mr. KELLEY. You will hear a little later from a witness who was one of the people in an airbag-equipped car, and was in a violent crash. Some of the cars you will see correspond to some of the people being shown on the film by that witness.

Finally, I have brought with me, and we can look at it, if you would like, at the conclusion of the hearing, some demonstration components. There is much talk about how complicated airbags are, and I would like you to look here at, in my hands, the totality of an airbag system, a very simple set of extremely effective and well-engineered components.

Finally, here is an airbag system that is now in the development stage, the next generation, if you would, of airbags as it is being developed, and this airbag is completely self-contained in the steering wheel of the car. It has no electronic components, and would even further reduce the cost of that equipment to the American car buying public.

So, those will be available at that time.

Senator DANFORTH. Thank you very much, Mr. Kelley.

With respect to the 5-mile-an-hour bumpers, the alleged justification to lower the standard from 5 miles an hour to 2½ miles an hour, was that it was a saving in cost and a saving in fuel efficiency.

Mr. KELLEY. That is correct. The department's justification for that move, as stated in its final rulemaking, was that consumers would benefit through lower new car prices, prices that were adjusted downward to reflect the lower cost of the 2½-mile-an-hour bumper to the manufacturer, and that the weight savings would constitute such a sufficient amount that they would mean commensurate important fuel savings to consumers.

We now have had many months of experience with cars with 2½-mile-an-hour bumpers, and we know, and we have placed in your record in the earlier hearing, we know that first of all there has been not 1 penny of price reduction in new cars that otherwise are identical to those with 5-mile-an-hour bumpers, and we know that the weight savings, where they exist, are so minimal that at most they may amount to 1½ or 2 gallons of gas a year to the consumer. That is a few dollars of saving in exchange for the exposure to the kind of horrendous dollar amounts of damage that we have seen in the film today.

---

[2] The material was not reproducible and is in the committee files.

Senator DANFORTH. Now, the cost of airbags, what are the estimates, assuming the universal availability of airbags? What would be the cost per car?

Mr. KELLEY. I believe, sir, that by far the most reliable estimate continues to be that provided in earlier hearings of this subcommittee and to the Department of Transportation by the companies that manufacture the actual airbag components, and that figure for mass production airbags was under $200, indeed, initially as low as $185 for full front seat airbag components. That includes complete markup to the manufacturer and the dealer.

Now, it is in the nature of such technologies that as they are more routinely put into cars and as subsequent model years are produced, the price goes down even further, and finally disappears into the price of the new car, and for many people buying cars with automatic transmissions, I think they now know that they are no longer paying $900 for an automatic transmission. Indeed, in some cars it costs you more to get a standard transmission.

Senator DANFORTH. I have a list of the cost of options for the 1983 Ford Mustang, which I am going to make part of the record.

In other words, your testimony is that the cost of airbags is about the same as the cost of power side windows.

[The list follows:]

Options Available on 1983 Ford Mustang

Option	*Cost*
Interval wipers	$49.00
Tilt steering wheel	108.00
Premium sound	117.00
White convertible roof console	191.00
TRX 220/55R390 tires	551.00
Power steering	202.00
Leather-wrapped steering wheel	59.00
Fingertip speed control	170.00
Air-conditioning	724.00
Am/fm/stereo radio	109.00
Power side windows	180.00
Protection group—appearance	60.00
Lock group—power	160.00

Source: Ford Motor Company Washington Office.

Mr. KELLEY. Yes, about the same, or less.

Senator DANFORTH. Or less. White convertible roof console, again, I don't know what a white convertible roof console is, but that is $191. Whatever that is, it is about the same cost, or more, as an airbag system.

Mr. KELLEY. The manufacturers, when they wish to sell an option, will place it on many, many cars that go to the dealer's showroom and the dealer lot, and although we talk of that as an option, it is often hard to find cars that do not have that option, and the inconvenience of waiting for many weeks to order a car without that option and that extra cost deters many consumers from saving the $200 or $300 or $400 or $500 for the otherwise unneeded, unwanted accessory.

However, airbags have never been given that kind of exposure or that kind of treatment, and so those whose lives could have been saved, those whose injuries might have been prevented, did not

even have the chance, do not at all have the chance today to buy that kind of equipment under any circumstance for any price.

Senator DANFORTH. Mr. Kelley, at the time that the airbag rule was rescinded and the 5-mile-an-hour bumper was rolled back to the 2½-mile-an-hour bumper, were you at that time interested in this area and what was going on in NHTSA?

Mr. KELLEY. Yes, we were. We have been following the course of bumper design and Federal rulemaking concerning bumpers since 1970, and we had developed over those years a rather impressive store of data and crash test results that even as NHTSA was looking at the proposal to roll back the standard made it clear that that proposal would be a disaster.

Senator DANFORTH. Would it be accurate to say that when NHTSA has been dismantling rules, rolling back rules, rescinding rules, it has been able to operate with great haste?

Mr. KELLEY. That is entirely accurate.

Senator DANFORTH. In fact, the Supreme Court said that its action was arbitrary and capricious, very great haste when it acted on the 2½-mile-an-hour bumper, and when it rescinded the passive restraint rule. Would that not be correct?

Mr. KELLEY. As I believe was developed in your discussion earlier with Ms. Steed, the Agency's very giving of notice of intention to roll back these standards, coupled in the case of the passive restraint with a suspension of the standard at that time, effectively meant that the standard was out of effect that day. I think that it can be argued very, very persuasively and realistically that as far as the manufacturers were concerned, those standards no longer existed on the days of the announced intention to suspend.

Senator DANFORTH. Do you think that the position of NHTSA with respect to passive restraints, the announcement of further rulemaking beginning in October, indicates that NHTSA is proceeding with all deliberate speed with respect to acting on the Supreme Court's decision of last summer?

Mr. KELLEY. I will not be satisfied that NHTSA is proceeding with due and proper speed on the passive restraint matter until NHTSA adopts something very close to the timetable urged on it by State Farm Insurance Co. in its filing last week, and I have made a copy of that timetable a part of my testimony.

Senator DANFORTH. You do not believe that this is the time for elaborate new studies?

Mr. KELLEY. No new studies whatsoever are needed to show the airbag's effectiveness and the effectiveness of passive restraint protection generally. No new so-called demonstration projects are needed to provide airbags in a few cars while many go wanting. What is needed is action on behalf of the public under the law.

Senator DANFORTH. Do you think that NHTSA in the last 2½ years has been a positive, neutral, or negative actor in the area of automobile safety?

Mr. KELLEY. I have to conclude that NHTSA in the past 2 years has been a negative player in the area of motor vehicle safety, and that on balance many more people not only have died and been injured, but for years to come will die and be injured as a result of its actions in the past 2 years than otherwise would have had the Agency simply stayed on the course that it inherited 2 years ago.

Senator DANFORTH. Thank you very much, Mr. Kelley.
Is Mr. DeMuth here?

STATEMENT OF CHRISTOPHER DeMUTH, ADMINISTRATOR FOR INFORMATION AND REGULATORY AFFAIRS, OFFICE OF MANAGEMENT AND BUDGET

Mr. DEMUTH. Mr. Chairman, I very much regret being late, and I apologize.

Senator DANFORTH. That is quite all right.

Mr. DEMUTH. I appreciate this opportunity to testify concerning automobile safety regulation and the administration's regulatory reform program.

Shortly after taking office in January 1981, President Reagan instituted a series of policies and procedures that are landmarks in the history of Federal regulation.

Senator DANFORTH. Would you please sit down?

VOICE. Mr. Chairman, may we have a moment of silence for——

Senator DANFORTH. No, I am sorry, you may not. This is not a time for demonstrations. Please sit down. Please sit down. Officer, will you please remove this gentleman?

I am sorry, Mr. DeMuth. Please proceed.

Mr. DEMUTH. Thank you, Mr. Chairman.

In Executive Order 12291, the President required that to the extent permitted by statute, all new Federal regulations should be strictly justified in economic terms. OMB, which had recently been assigned responsibility for reviewing paperwork requirements in regulations by the Paperwork Reduction Act of 1980, was given the complementary task of reviewing rules for consistency with economic principles set forth in the Executive order.

The President also established a task force on regulatory relief chaired by Vice President Bush and consisting of senior executive administration officials, to supervise Agency reviews of existing regulations. During the first year and a half of the administration, the task force designated over 100 inherited rules for priority agency reconsideration according to the principles of the Executive order.

These efforts have been a substantial success. The rate of issuance of new rules, which was growing incontinently in the late 1970's, has been dramatically slowed, and the cost effectiveness of new rules that have been issued has significantly increased. The changes made to date will save the economy scores of billions of dollars of needless regulatory costs in the coming years.

Recently, the task force issued its final report and doing what does not come naturally in Washington, put itself out of business. The task force's final report, which I have provided to the subcommittee, describes in detail the administration's regulatory reform accomplishments, and sets forth a set of regulatory policy guidelines applying the general principles of the Executive order to specific types of regulatory issues, including those encountered in motor vehicle safety regulations.

The administration's program has, of course, been controversial. Federal regulation has been a subject of endless controversy since the beginnings of the Interstate Commerce Commission nearly a

century ago, and any determined effort to change the status quo of boundless regulatory growth was bound to heighten the pitch of debate even further. But it is important to note that the policies and procedures of the President's Executive order built upon bipartisan antecedents.

Presidents Ford and Carter issued a series of increasingly pointed Executive orders requiring that new rules be analyzed for their costs and benefits and be reviewed by officials of the President's Executive Office. Through the 1970's, regulatory statutes passed by the Congress required with increasing explicitness that agencies balance costs and benefits in issuing rules rather than attempting to provide absolute protections. In 1982, the Senate passed by unanimous vote the Laxalt-Leahy regulatory reform bill, which would enact in statute the essentials of the President's Executive order.

It is not surprising that a consensus should begin to emerge on these general policies and procedures, even while their application in particular cases should remain hotly contentious. Federal regulations are today big business throughout the executive branch, and command private resources well in excess of $100 billion every year. We know that many of these resources are squandered. Regulations may provide anticompetitive protections to influential economic or regional interests at the expense of the general welfare. They may pursue health and safety goals in ways that are inefficient and inequitable. They may regiment our private economy to the extent of suppressing innovation and productivity growth.

And whether regulatory expenditures are made wisely or poorly, they are subject to none of the controls of public finance that discipline direct Federal expenditures, such as taxation, appropriation, budgeting, and outlay controls. Under the circumstances, it is both essential and inevitable that regulatory costs should be subject to some analogous form of executive management and oversight such as the OMB review procedures in the President's Executive order.

The order has been written and implemented to address these problems in a precise and measured way. The economic justification requirement—that rules should produce maximum net social benefits—is designed to smoke out regulatory requirements that are excessive, inefficient, or anticompetitive, and to focus attention on the effects of Government rules on average citizens and consumers who are often poorly represented in agency rulemaking proceedings.

At the same time, the OMB review procedures protect the rulemaking authorities given by Congress to the departmental secretaries and other executive branch officials. The Executive order sets forth general policies to be followed by the President's appointees in exercising the discretion given them by statute, and charges OMB with reviewing individual decisions for consistency with the President's directives.

OMB has no independent veto authority in the review process. It acts, here as in other areas, as the President's agent. Where disagreements arise under the Executive order, they are raised for further discussion among senior administration officials, and then, if necessary, to the President himself.

Highway safety is an important public safety issue, and automobile design is clearly one of the most important determinants of rates of highway accidents, injuries, and fatalities.

During the past two decades, these rates have generally improved. This is in part a result of improved highway design, in part a result of safer driving habits, and in part a result of improved automobile design—cars have become progressively and significantly more crashworthy to their occupants since the mid-1960's.

The National Highway Traffic Safety Administration can justly take credit for prompting, through its regulations and research and enforcement activities, many of the important automobile design improvements that have been introduced since the Agency was established in the mid-1960's. At the same time, the Government has sometimes wandered into an unfortunate "bells and whistles" approach to automobile design—requiring manufacturers to supply features of dubious practical utility, and in one infamous case—the seatbelt-ignition-interlock requirement—provoking a genuine consumer revolt.

When the Reagan administration came into office in 1981, it discovered numerous automobile-design regulations of this sort proposed or in place. Some offered little or nothing in the way of improved safety—such as the requirements that speedometers read in kilometers as well as miles per hour and that odometers be tamper resistant—or offered benefits that were very small relative to their costs—dashboard tire-pressure gauges. Others appeared to be affirmatively misleading to consumers—the tire grading requirements—or to impose substantial restraints on automobile design and supply competition—the requirement that headlamps be of the sealed-beam variety, effectively banning the composite headlamps widely in use in most countries. And in some cases NHTSA standards appeared to reduce occupant safety, as in the case of the windshield glazing standard of concern to this subcommittee. We believe that NHTSA has done an exemplary job over the past 2½ years weeding out such needless or harmful rules from the CFR, while improving those with significant positive benefits for automobile safety.

Now I would like to turn to two decisions which have received particular attention and have been discussed this morning: the revocation of the passive restraint, or 208, standard; and the modification of the automobile bumper regulation from a 5- to a 2.5 mile-per-hour standard. In late 1981, NHTSA revoked the 208 standard, which would have required automobiles, beginning with model year 1984, to be equipped with passive-restraint systems—passive seatbelts or airbags. This was the latest chapter in what had become the longest running saga in the history of Federal safety regulation, and public reaction to the decision was generally quite favorable. But, as we all know, this was not to be the final chapter, for the decision was disapproved this summer by the Supreme Court in *Motor Vehicle Manufacturers' Association* v. *State Farm Mutual Automobile Insurance Co.*

Recently, NHTSA announced its intention to commence a rulemaking proceeding in October to reevaluate those aspects of its decision rescinding the 208 standard which were disapproved earlier this summer by the Supreme Court. I know that Secretary Dole is

intent on a thorough and open assessment and a prompt decision on these issues. It would, of course, be inappropriate for me to comment on the particulars of the upcoming proceeding, but I can offer two general thoughts on the 208 recision itself and its disapproval by the Court.

First, we do not in any way regard the Court's decision as undermining the policies of Executive Order 12291 or the administration's regulatory reform efforts in general. The passive restraint issue is one of unusual complexity and uncertainty—as the records of the several administrations and Congresses that have grappled with it testify.

Cost-benefit analysis is not a procedure for eliminating complexity and uncertainty. It is rather a means of organizing thought about decisions in a systematic way, so as to reveal what is, not known, as well as what is, about the likely effects of the decision.

In the case of the 208 recision, NHTSA's regulatory impact assessment did not purport to reduce the issue to a set of incontrovertible numbers. It showed, indeed, that the issue turned in significant part on questions of individual behavior about which absolute assertions were impossible, such as popular reactions to the requirement and the tendency of drivers and passengers to detach or leave detached passive seatbelts.

The *State Farm* decision illustrates how the cost-benefit analysis requirement of the President's Executive order has made regulatory decisions more transparent and understandable—and therefore more open to rigorous review by the courts—just as earlier decisions of the Court in the *Cotton Dust* and *Benzene* cases made this point regarding the requirements instituted by Presidents Carter and Ford.

We have no quarrel whatever with the heightened judicial scrutiny of administrative rules encouraged by the President's Executive order, so long as this scrutiny is applied equally to all kinds of rules, and maintains a proper deference to matters of Executive judgment that should be left to politically appointed regulatory officials.

Second, we applied the Supreme Court's emphatic rejection of the court of appeals' decision in the *State Farm* case, which would have imposed an effectively higher standard of judicial review on decisions to remove regulations than on decisions to impose them in the first place—and thus have laid the groundwork for a Court-sanctioned regulatory ratchet on the economy without any basis in statute or judicial precedent.

The essence of the Supreme Court's decision was that the same standard of review should apply in both directions. And as I have said, as long as this is so, we are content that the standard should be a rigorous one. The administration will review the 208 decision promptly and in full compliance with the Supreme Court's mandate.

NHTSA's decision to modify the automobile bumper regulation from a 5- to a 2.5-mile-per-hour standard was reached under statutory criteria that are similar to those of the Executive Order 12291. NHTSA's earlier 5-mile-per-hour standard derived from assumptions with which we disagree, which were contradicted by internal

NHTSA documents during the prior administration, and which in one case—gasoline prices—was conspicuously out of date.

The 2.5-mile-per-hour modification has been challenged in court, but we believe that the major assertions presented by the automobile insurance industry in this suit—for example, that lighter bumpers will lead to no reduction in secondary vehicle weight and gasoline-carrying costs—are highly implausible.

This decision, too, involves matters of uncertainty and judgment, such as the lost consumer value ascribed to unrepaired bumper damage. But we are quite confident that our modification will yield substantial benefits to consumers.

It is instructive to go beyond the particulars of the 2.5-mile-per-hour modification debate and ask why bumpers should be regulated at all. It is far from apparent why the public welfare should be improved by the Government telling everyone in the United States to purchase the same kind of car bumper. Certaintly no significant safety issues are involved. According to the arguments of the insurance carriers, consumers are fairly knowledgeable of the relevant costs—of gasoline, of repairing fender benders, of their own time and bother, and the like. And, of course, consumers differ so one would expect that their preferences for more or less protective bumpers would differ according to their knowledge of their own driving habits and driving circumstances as well as cost and income. In a case such as this, mandatory Government standards cn only suppress natural variations and individual freedom of choice, while promising very little in the way of offsetting benefits. Private markets, including insurance markets, also regulate individual behavior, and usually in ways more subtle than the Government could ever approximate. Insurance contracts are filled with rate distinctions based upon attributes that can be easily monitored, such as construction materials in household insurance. If it is indeed the case that, say, a car bumper costing $20 more over the life of a car will result in average repair costs of $30 less, then the insurance companies do not need to bring their cost/benefit analysis to Washington at all. Any rate discount between $20 and $30 for those with the costlier bumpers would be a good bargain for both the insurance companies and their customers.

Of course, the operative NHTSA statute requires that a bumper standard be set at some level of protectiveness according to the criteria it prescribes. But it is hardly surprising that a more lenient standard—which does not, after all, forbid more protective but more costly bumpers—has proven to be more cost-beneficial according to the empirical evidence required by the statute. That the 2.5-mile-per-hour standard allows for greater variety and choice within the crucial range of bumper designs that are technically feasible and economically reasonable, is icing on the cake.

Mr. Chairman, this concludes my prepared remarks. I appreciate your taking my testimony, and would be happy to try to answer any questions the subcommittee may have.

Senator DANFORTH. Thank you.

Well, you have certainly pulled no punches. You have stated the position of your office and the administration. I think your position is far out. That is, it seems to me that the question isn't regulation

versus no regulations; the question is whether or not regulations make sense.

My feeling is that what the administration has done is simply made a decision that it does not want passive restraint rules, does not want the 5-mile an hour bumper standard, and that is that. It has made up its mind.

Did you see the issue of Ward's Auto World where it describes the response of the administration to the Supreme Court case on passive——

Mr. DEMUTH. Yes, sir. Someone showed it to me.

Senator DANFORTH. Well, the article says that the administration remains determined to deflate the passive restraint requirement once and for all, and even if it fails, the White House is confident its renewed struggle will delay the mandate's implementation until late in the decade.

Is that a correct statement of the administration's position?

Mr. DEMUTH. No, sir. In a job such as mine one becomes numbed to the slings and arrows of outrageous press accounts, but that one, I must say, really takes the prize.

I asked around about the source of the quotations and could evince only bewilderment. The substance is clearly wrong. It talks about the task force being in charge, but the task force is no longer around. It talks about delaying a decision on the matter, but NHTSA has made it clear that it is going to resolve very promptly the issues given back to it by the Supreme Court. When the notice they are working on is published in mid-October, this will be evident.

So there is no substance whatever to the report. Officials at OMB—in any event, myself—have certainly talked with officials at the DOT about what to do in response to the Supreme Court's mandate. The notice that was issued last week went through our review procedures, as all such notices do.

The idea of initiating a proceeding for further comments on the issues that the Supreme Court raised was suggested to me, and I said it sounded fine. And when the notices and decisions are made by the Department, they will be reviewed by OMB. But the idea of giving marching orders and having already made the judgments is simply wrong.

Senator DANFORTH. Tell me, as long as President Reagan is President do you see any possibility of a passive restraint rule ever being put into effect?

Mr. DEMUTH. I would not want to comment on what the decision will be. There was a decision reached in 1981, and it is no secret that OMB approved that decision. We thought that it met the standards of the President's Executive order. The Supreme Court said that in three respects the decision was insufficient, so DOT now is going back.

I am not an expert on some of the technological issues—

Senator DANFORTH. I know you are not. That is exactly the point. You are not, OMB is not, and yet OMB really makes the decisions on auto safety rules, is that not correct?

Mr. DEMUTH. No, sir, it is not.

Senator DANFORTH. That is not correct?

Mr. DEMUTH. That is not correct.

Senator DANFORTH. So when the press speculates or even people in the administration comment that really the decisions are made at OMB on matters of auto safety, that is just erroneous?

Mr. DEMUTH. As I have tried to explain, if we at OMB review a proposed or a final rule and find difficulties with it that cannot be resolved between ourselves and the agency, we raise it to one of the senior Cabinet groups in the administration to bring in some other people who are not quite so close to the issue, and then if necessary we take it to the President.

Now, OMB is the Government's central budget and management office, and our policy views obviously carry some weight. But the policy views of the Cabinet departments carry some weight too, and when there are disagreements, they are usually on extremely difficult issues. We get together and argue them through and reach a decision.

But the idea that we are willy-nilly overruling decisions is simply incorrect.

Senator DANFORTH. I am not sure that you are willy-nilly overruling decisions. I think that you are just stating a position, and if the agency does not go along with the position, you will overrule it, but hopefully they will do it on their own.

Mr. DEMUTH. There are cases where the position that we have thought was correct in regulatory policy has ended up prevailing, and there are other cases where it has not. It is similar to the budget procedure.

Senator DANFORTH. Is the high-mounted rear stoplight proposal by NHTSA now before OMB for review?

Mr. DEMUTH. I do not know for certain. I have been told that it is coming over soon. Whether soon is this morning or yesterday or tomorrow, I do not know. I know that they have been working on it, but I have not looked at any of the documents.

Senator DANFORTH. Shall we hold our breath on that one?

Mr. DEMUTH. I know very little about it. I know that they have done some field tests.

Senator DANFORTH. Let me just ask you to try your best to explain to me the 2½-mile bumper standard. What is the justification for that? I take it it is not that rules themselves are bad. There is a rule. It is for a 2½-mile bumper, not a 5-mile bumper.

Mr. DEMUTH. There is a statute that requires us to set a standard. I would argue, if I were a legislator as opposed to an executive official, that it is implausible that the Federal Government can improve the public welfare by directing everybody in the Nation to buy the same kind of automobile bumper. I do not think there are any significant safety issues involved whatever.

I think that the relevant criteria for determining the best car bumper very enormously from individual to individual. They very according to driving habits, driving circumstances, income, value of time, and a variety of other factors affecting the tradeoff between bumper costs and damage-repair costs.

Senator DANFORTH. That is just a philosophical position. You think Government should be out of this business.

Mr. DEMUTH. In the case of bumpers it is hard for me to understand why the Government should be in it. I have never heard articulated what the case is for Government bumper standards.

Senator DANFORTH. Congress can make a few decisions, right?

Mr. DEMUTH. Absolutely.

Senator DANFORTH. If we have a standard, why should it be a standard for an ornamental bumper?

Mr. DEMUTH. The argument I have offered suggests that, in the context of a law that requires us to set a bumper standard based on analysis of costs and benefits of alternative standards, it is not suprising that a more lenient standard such as we have set proves on the empirical evidence to be much more cost beneficial.

Senator DANFORTH. Tell me how much more cost beneficial an ornamental bumper is than a real bumper.

Mr. DEMUTH. Our calculation is that a 2.5-mile-per-hour bumper is in the range of $23 to $28 more economical than a 5-mile-per-hour bumper to the average driver.

We have not, of course, prohibited people from buying more expensive bumpers if they wish to.

Senator DANFORTH. You have just told carmakers that they can make flimsy bumpers.

Mr. DEMUTH. As long as they meet the 2.5-mile-per-hour standard.

Senator DANFORTH. Did you consider the effect on the purchaser of a car if he is in a relatively minor accident?

Mr. DEMUTH. Absolutely, yes; that is considered.

Senator DANFORTH. Do you dispute the testimony of Mr. Kelley?

Mr. DEMUTH. I do not know all of the details, but I know the essential arguments the State Farm people are making, and I think they are flatly wrong. The idea that there is no secondary weight whatsoever associated with heavier bumpers is contradicted by all of the evidence I have seen, yet this motion is crucial to their argument. I knew before I came to the Government that there had been an internal study at NHTSA in 1979 which showed that the 5-mile-per-hour standard was very bad for consumers. This study was hastily revised. It was infused with all sorts of wrong assumptions, such as that gasoline cost 75 cents a gallon at a time when everybody knew it cost over a dollar. The decision was reversed, and the study's conclusion was reversed, and it was subject to what I thought was highly effective criticism by the administration's Council on Wage and Price Stability at the time.

And as to the conclusions that we have made, I feel extremely comfortable with them. I know what the criticisms of our analysis are, and I think they are wrong.

Senator DANFORTH. How do you feel about air bags?

Mr. DEMUTH. I would like to be much reticent on that matter because the Supreme Court has said that we have to revisit three extremely difficult issues in the case, and we are going to be doing that over the next several months.

I do not know what is going to be in the NHTSA proposal.

Senator DANFORTH. If you are a betting man, what would the odds be on whether or not there will ever be mandatory air bags or passive restraints during the Reagan Presidency?

Mr. DEMUTH. Sir, I really could not say.

Senator DANFORTH. Tossup?

Mr. DEMUTH. Sir, I just do not know.

Senator DANFORTH. Would it be close to zero?

Mr. DEMUTH. Sir, I just really do not know. I do not know.

Senator DANFORTH. I will make a bet with you, not right now but after the meeting.

I think this, Mr. DeMuth. I think that auto safety standards have become a symbol. They have a symbolic value as far as the administration is concerned. And I think that auto safety standards, and especially air bags, are, in the minds of people in the administration, symbolic of Government regulation run amok. And, therefore, I believe that it is very important to the administration for symbolic reasons to not have passive restraint regulations. And my guess is that this statement in *Auto World* is a quite accurate statement of the position of the administration, that in point of fact there is no possibility that this administration is going to agree to the implementation of a passive restraint rule that will use delay or whatever other means are available to it to prevent such a rule from coming into effect. And that this is a decision which is not made in DOT, it is not made in the NHTSA; rather, it is an administration position, and it is based on a philosophical point of view which you have stated with respect to your own view on the bumper standard.

Mr. DEMUTH. Mr. Chairman, I think that one must make careful distinctions. I think that NHTSA has had some successes in the last two decades, and I think it would be inaccurate to say we are implacably opposed to any new safety requirements.

As far as I can tell, you and NHTSA are in complete agreement on the difficulties with the current windshield glazing standard and that it ought to be revised. Technology has changed, and the standard is going to catch up, It is going to be a more protective standard.

We are proposing tethers for child safety seats, which have been found to be extremely effective. So one has to make distinctions. When I talk about automobile bumpers, I have offered arguments I have not heard contradicted suggesting that it is very unlikely that regulation can be beneficial. But it does not mean that regulation can never be beneficial.

Senator DANFORTH. I have never heard a good argument as to why the rollback occurred, but I guess it is in the eye of the beholder.

Let me ask you, in considering passive restraints does OMB consider lives saved and personal injuries prevented by passive restraints?

Mr. DEMUTH. Yes, sir.

Senator DANFORTH. And could you give me your estimate as to the number of lives saved if passive restraints were installed in cars?

Mr. DEMUTH. I do not know. There is a range of estimates and——

Senator DANFORTH. Which one does OMB use?

Mr. DEMUTH. Sir, I do not know the number.

Senator DANFORTH. Could you furnish it for the record?

Mr. DEMUTH. Surely. We would just refer to the record of the 208 proceedings.

Senator DANFORTH. Whatever you use as far as your own review of the passive restraint, as far as estimates of lives saved and injuries saved if restraints were installed in automobiles.

Mr. DEMUTH. I would be happy to do that. I would be referring to information which is probably out of date to some degree and which may be changed.

Senator DANFORTH. Whatever estimate you are using, you say that you do consider the loss of life, the saving of life, the prevention of injury. I would just like to have whatever your own figures are, estimates are in that regard.

Thank you very much.

Mr. DEMUTH. Thank you, sir.

[The following information was subsequently received for the record:]

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C., December 8, 1983.

Hon. JOHN C. DANFORTH,
Chairman, Subcommittee on Surface Transportation, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, D.C.

DEAR JACK: In response to your request, I am sending you my review of estimates of the potential effects of passive restraint requirements on traffic fatalities. As I observed in my September 13 testimony before your Subcommittee, the Office of Management and Budget does not calculate its own estimates of the safety effects of regulations, but does consider estimates made by the rulemaking agencies and by others.

As I noted in my testimony, the passive restraint issue is one of unusual complexity and uncertainty. I believe a fair assessment of the various passive restraint effectiveness estimates bears this point out, quite apart from other uncertainties not discussed here such as the likely cost of alternative restraint systems.

The estimated effect of passive restraints on traffic fatalities varies significantly depending on the time the estimate was made and the source of the estimate. The causes of these variations have been variations in any or all of the following seven key parameters:

(1) The safety environment (the number of traffic fatalities in the absence of occupant protection);
(2) The percentage of vehicles to be equipped with air bags versus automatic belts;
(3) The usage rate of automatic belts;
(4) The usage rate of manual belts;
(5) The effectiveness rate of air bags;
(6) The effectiveness rate of automatic belts; and
(7) The effectiveness rate of manual belts.

In the following sections, I review and discuss fatality-reduction estimates made in NHTSA proceedings in 1977 and 1981, and then turn to the important issue of the effectiveness of air bags.

1. THE 1977 RULEMAKING

The passive restraint rule rescinded in 1981 was issued in 1977. NHTSA estimated in 1977 that the rule would avert approximately 9,000 fatalities annually. This was a "steady state" estimate for when the entire fleet of motor vehicles would be equipped with passive restraints—at least a decade after the initial model year in which the rule would take effect.

In the light of subsequent developments and new information, there is now serious question about the accuracy of the key assumptions underlying this estimate, most importantly:

NHTSA assumed that 63 percent of cars would be equipped with air bags and only 37 percent with passive belts. However, by 1981 it had become evident that almost all cars would be equipped with passive belts.

NHTSA assumed that the *usage rate* of passive belts would be 60 percent. By 1981, analysis of the Rabbit and Chevette passive belt experiences, in light of the likely role of self-selection, interlocks, and nondetachability, suggested that this estimate was at least somewhat high, and possibly very high.

NHTSA assumed an *effectiveness rate* for fatalities (defined as the reduction in fatality risk of an occupant protected by a particular system as a percentage of the risk faced by an occupant unprotected by any occupant restraint system) of 40 percent for an air bag alone and 66 percent for an air bag plus buckled manual lap belt. Since these estimates were made, better data for this purpose have become available to NHTSA. The important issue of the air-bag effectiveness rate is discussed more fully below.

2. 1981 RULEMAKING

A. NHTSA estimates

By 1981, it was universally acknowledged that virtually all cars would meet the 1977 passive restraint requirement by being equipped with automatic seat belts, not air bags. This section reviews only estimates assuming all cars are equipped with automatic belts. The air bag issue is discussed subsequently.

In its 1981 analysis NHTSA assumed that an automatic belt (either a two-point belt with knee bolster or a three-point belt), if not detached, would avert 50 percent of fatalities. This was equivalent to the assumed effectiveness of the manual three-point belt currently featured on all new vehicles. While some other estimates of seat belt effectiveness show manual belts to the superior to automatic belts, the margin of superiority is small.

NHTSA assumed that in the absence of the passive restraint regulation, manual belt usage would be 11.4 percent. It calculated the effect of a passive restraint requirement on fatalities under assumptions of automatic seat belt use ranging from 22.8 percent to 60 percent, but noted that "the available data do not enable the Agency to predict reliably that the automatic restraint requirements would have increased belt usage significantly, if at all." This range of usage assumptions, combined with the 50-percent effectiveness assumption, yielded an estimate of 2,050–8,750 fatalities averted annually on a "steady state" basis when all cars in use were equipped according to the rule.

With the advantage of hindsight, there appear to be sources of upward bias in this estimate:

There has been a modest rise in the manual belt usage rate since 1981; in some localities the usage rate has increased significantly in response to local efforts, suggesting the possibility of further general increases in the future.

Trends in traffic fatalities indicate that the baseline traffic safety environment (fatalities in the absence of any occupant protection) is better than NHTSA's 1981 projection. On the most recent evidence, baseline traffic fatality rates would be lower than NHTSA projected in 1981. (See NHTSA, "Traffic Safety Trends and Forecasts," September 1983.)

NHTSA determined that, given its uncertainty about the effect of detachability on passive belt usage, it was unable to conclude with assurance that there would be any significant increase in belt usage or automotive safety. The Administrator of NHTSA determined that manual belts and detachable automatic belts were virtually equivalent in terms of their expected usage rate; NHTSA critics such as Ralph Nader had expressed the same opinion on this point at hearings on the rulemaking. On the other hand, the Supreme Court, by a vote of 5 to 4, believed that the factor of inertia might make the usage rate of detachable automatic belts significantly higher than that of manual belts, and directed NHTSA to consider the matter further.

B. Nordhaus estimates

In a paper submitted in the 1981 rulemaking docket on behalf of insurance companies supporting the passive restraint rule, William Nordhaus of Yale University conducted a benefit-cost analysis of the rule. Nordhaus assumed that passive belts would induce increases in seat belt use of 29–56 percent, with a best estimate of 41 percent. For the best-estimate usage assumption he found the "steady-state" annual safety effect would be 6,400 fatalities averted annually. Except for the usage assumptions, Nordhaus' assumptions and methodology in determining the safety effect were fairly comparable to those of NHTSA.

C. Arnould-Grabowski estimates

A previously published study by Richard J. Arnould of the University of Illinois and Henry Grabowski of Duke University was also submitted into the 1981 rulemaking docket. Their study differs from the analyses by NHTSA and Nordhaus in several ways:

For automatic belts, they assume alternative usage rates of 60 percent and 70 percent—relatively high compared to the assumptions of NHTSA and Nordhaus.

They calculated fatalities averted in comparison to a baseline of no passenger protection. However, they also calculate the effect of a 10 percent manual belt usage rate. By calculating increments from this baseline, we can approximate the NHTSA methodology (baseline of 11.4 percent manual belt usage). Figures given here are calculated on this basis, which by itself leads to a small overstatement of fatalities averted.

They used two alternative sets of effectiveness estimates: one set from the 1977 NHTSA rulemaking and the other from research by Huelke and O'Day. The automatic-belt effectiveness assumptions were 50 percent (NHTSA) and 28 percent (Huelke-O'Day). The manual-belt effectiveness assumptions were 60 percent (NHTSA) and 32 percent (Huelke-O'Day).

Assuming that all cars were equipped with automatic belts, with a usage rate of 60 percent, the "steady-state" effect suggested by the Arnould-Grabowski study would be 6,540 fatalities averted under the NHTSA effectiveness assumptions, and 3,706 fatalities averted under the Huelke-O'Day effectiveness assumptions.

3. AIR BAG EFFECTIVENESS

On the basis of a 1976 analysis, NHTSA in the 1977 rulemaking estimated the effectiveness rate for an air bag alone at 40 percent and for an air bag plus lap belt at 66 percent. Through the succeeding years, there has been a tendency to accept these estimates uncritically as verified fact. In part this may be because the issue was not considered important, as it came to the realized that almost all cars would meet a passive restraint requirement by being equipped with automatic belts. The issue is more important now, since the recent Supreme Court decision requires NHTSA to consider an all-air-bag rule separately from the 1977 rule NHTSA rescinded in 1981. It is essential to re-evaluate the effectiveness of air bags, in light of the facts that: (1) no detailed explanation of the methodology of NHTSA's 1976 analysis has ever been published, (2) the relevant accident data available to NHTSA at that time were considerably inferior to those available now, and (3) a set of alternative effectiveness estimates by reputable researchers is quite different.

Based on NHTSA's report ("Effectiveness Levels of Various Occupant Restraint Systems," July 1976), it appears that the agency's original estimates were derived using three sources of information: (1) field experience from the small number of air-bag-equipped cars on the road, (2) engineering laboratory test results, and (3) various judgmental estimates by specialists. NHTSA did not present numerical magnitudes for any of these three sources nor explain how it combined them with each other or with the available data on fatal accidents. As explained below, today's field experience is not statistically significant; the field experience as of 1976 would have been even less significant. Engineering lab tests represent a fraction of real-world crashes in an artficial environment. According to the NHTSA report, there were differences among the specialists on the absolute effectiveness of air bags, although they tended to agree on their effectiveness relative to seat belts.

It is generally acknowledged that the proper way to estimate air bag effectiveness is from data on the actual experience of air-bag-equipped vehicles on the road. This method is currently impracticable, however, because of the small size of the air-bag-equipped fleet, as discussed more fully in the first section below.

In the absence of adequate data on real-world experience, the only method of estimating air bag effectiveness is some form of a priori engineering judgement. In essence, this combines data on fatalities in non-air-bag-equipped cars with judgments as to whether an air bag would have averted a particular fatality or class of fatalities. This has the inescapable drawback of subjectivity, as discussed in the second section below.

The conclusions of this part may be simply stated: There is no basis for placing great confidence in any air bag effectiveness estimate that now exists. As long as the air-bag-equipped fleet is so small we shall not have the information to make confident effectiveness estimates in the theoretically best way. Nonetheless, the data now exist to derive considerably better effectiveness estimates than any previously available.

A. Experience of air-bag-equipped cars

In 1980 NHTSA announced an air bag effectiveness rate of 54 percent, based on data from the accident experience of air-bag-equipped cars. This estimate was statistically meaningless. It was based on a total air-bag-equipped fleet of about 12 thousand cars, for which there were just six fatalities known at the time. This statistically sample is so small that the discovery of a single additional fatality in an air-bag-equipped car lowers the estimated effectiveness rate substantially. A recent NHTSA recalculation of the 1980 field data, using a subsequently discovered fatality in an

air-bag-equipped car and other corrections (such as the eliminaiton of rear seat fatalities), produced a much lower figure.

Based on 10 fatalities in air-bag-equipped cars known as of March 31, 1983, NHTSA's latest computation of the air bag effectiveness rate on this basis is 18 percent, compared to manual belts as used (or, more properly, about 21 percent compared to no occupant restraint protection). However, this has a 90 percent two-tail confidence interval of −39 to +56. Obviously, any such number is meaningless for practical purposes, as NHTSA has properly emphasized.

In the 1976 "Coleman Agreement," the Department of Transportation negotiated contracts with automakers to provide air bags in a substantial number of 1980 and 1981 model year cars. Had that agreement not been abrogated by the Carter Administration, we would by now have had several years' invaluable field experience with an air-bag-equipped fleet of perhaps half a million vehicles.

B. Engineering evaluation

Under this approach, information on fatal accidents in non-air-bag-equipped cars is combined with subjective judgments as to whether the existence of an air bag would have averted that fatality. A 1979 paper by Huelke et al. estimated an effectiveness rate of 25 percent for the air bag alone and 34 percent for the air bag plus lap belt—strikingly lower than the earlier NHTSA estimates. This was derived from a study of 101 front-seat fatalities in rural auto accidents. Three experienced crash investigators analyzed each fatality and made an expert, but subjective, judgment as to whether the use of a particular restraint system would have averted the fatality. The study has the obvious limitations of subjectivity and small sample size. Since only rural accidents were covered, the estimated effectiveness rate may have been biased downward, because a larger proportion of rural fatalities are in high-speed accidents, where no occupant restraint system is effective. (The Huelke et al. effectiveness estimates for seat belts were also relatively low.) The implication of the Huelke et al. study lies not in the values of the effectiveness estimates themselves, but as another indication of the need for a thoroughgoing reassessment of the effectiveness rate for air bags.

When NHTSA derived its original effectiveness estimates, the best accident information available to it was data from the Fatal Accident Reporting System (FARS) for the year 1975. Subsequently, much better data on accidents have become available to NHTSA. These new data include FARS data for additional years, the National Crash Severity Study (NCSS), and the National Accident Sampling System (NASS). Using these sources, NHTSA will be able to classify traffic fatalities according to a number of factors relevant to the effectiveness of air bags: (1) occupant position, (2) direction of impact, (3) crash speed ("Delta V" or the instantaneous change in velocity at impact), (4) age of person killed, (5) whether a rollover occurred, (6) whether ejection occurred, (7) whether the person was killed by a secondary impact, and (8) whether there was catastrophic compartment invasion or object entering the passenger compartment. For some of these factors, no information was available when the original air bag effectiveness estimates were made. For others, the data available now are significantly better.

I hope that this review will be useful to you and your colleagues on the Subcommittee on Surface Transportation. In my view, the long and contentious history of the passive restraint rule, only a part of which is recited here, illustrates an important shortcoming in federal safety regulation that is too little acknowledged or discussed. This is the inherent difficulty of making a mandatory, all-or-nothing safety decision, affecting large and diverse populations, and based upon scant practical experience.

It is very rare that all of the consequences of a new safety technology, both positive and negative, are apparent at the outset, before the accumulation of considerable real-world experience. This has been so for life-saving breakthroughs that turned out to be enormously beneficial, such as antibiotics, as well as for the more numerous promising ideas that turned out to be flops. Typically, a small group of promoters and developers have great faith in a new idea, but are faced with potential beneficiaries whose initial attitudes range from equal enthusiasm, through indifference and skepticism, to outright hostility. It is only after the more optimistic and venturesome begin to make use of the innovation that the practical results lead to its more or less rapid or widespread adoption by others (or, very often, to its demise). But when, in this situation, the initial question is transformed into whether to require everyone to adopt the innovation in advance of much practical experience, attitudes all around tend to become strongly politicized and, in the absence of facts, abstract and dogmatic.

This seems to me a fair characterization of the situation surrounding air bags and other passive restraints over the past decade. There is little question that some drivers would like to try passive restraints and would be willing to pay for them, and that others (such as those who always use their manual belts) would not; but this, for the most part, is not the question the government has asked. I have heard it said that, but for the recurrent proposals to make one or another restraint method a government-required purchase for all new car buyers, major car manufacturers would have begun to offer passive systems as optional equipment years ago. If this had happened, we (and I mean not only those of us in government, but consumers and suppliers as well) would know far more than we do today, not only about effectiveness but about consumer acceptance and possible design improvements. Obviously one can only speculate about this, but it seems highly plausible in light of the general considerations mentioned above, and on the evidence of the Coleman Agreement, which was broken by the government and not by the auto makers.

In all events, we are today in about the same position we were in years ago: with an automobile industry understandably reluctant to venture new ideas in restraint design except on government orders; with the government asked to come up with those orders based upon precious little in the way of practical knowledge; and with a profusion of confident, even passionate opinions on the subject, in spite of (or because of) the absence of practical experience. Government safety rules can do and have done some good in the world, but they can do harm as well—all the more when we pay too little heed to their inherent limitations.

Sincerely,

CHRISTOPHER DEMUTH,
Administrator for Information and Regulatory Affairs.

Senator DANFORTH. Next we have a panel, Ms. Joan Claybrook and Ms. Rosemary Shahan-Dunlap.

Ms. CLAYBROOK.

STATEMENTS OF JOAN CLAYBROOK, PRESIDENT, PUBLIC CITIZEN, WASHINGTON, D.C.; AND ROSEMARY SHAHAN-DUNLAP, PRESIDENT, MOTOR VOTERS, SAN DIEGO, CALIF.

Ms. CLAYBROOK. Thank you, Mr. Chairman.

I appreciate your invitation to testify today. My name is Joan Claybrook, and I am president of Public Citizen, a national public-interest organization. I served as the administrator of the NHTSA from April 1977 to January 1981.

NHTSA in the last 6 months has issued a number of reports, and I would like to point out some of the recent findings that they have made.

In March 1983 the DOT prepared a report for the National Accident Sampling System which highlighted the following facts: "Almost two-thirds of the serious accidents involving cars were frontal or front angular collisions. These are the types in which air bags do their job."

The previous figure which they had developed said that 55 percent of the deaths occurred in these types of crashes. Now they are saying that two-thirds of the serious accidents do.

Second, "Only 9 percent of the accident-involved occupants were restrained with safety belts." And, third, "Brain and spinal cord injuries accounted for 60 percent of all fatalities in which trauma data were available."

The Government and the auto industry know these facts well. They also know that auto crashes are the largest cause of death and serious injuries for Americans under age 34, the largest cause of paraplegia and quadriplegia, and a major cause of epilepsy. They cost the Nation over $57 billion in quantifiable losses each year,

and each day more than 120 Americans die in auto crashes, the equivalent of a major airline crash.

President Reagan condemned the Russian attack on the Korean airliner carrying 269 people as a "massacre" and "an act of barbarism." Surely the question must be asked whether failure to issue standard 208 with its potential to save 9,000 lives a year, which incidentally is the official DOT figure through the Carter administration—9,000 lives each year and mitigate 65,000 injuries is anything less.

The administration refuses to face up to the fact that on the average, every 10 minutes, 24 hours a day, 365 days a year another American is killed in an auto crash, and every 10 seconds another person is injured.

Another report recently issued by the DOT documents that the existing, very modest standards now in effect have saved 83,000 lives since 1968, and the price tag is negligible.

The Department states that 27 fatalities are avoided for each $1 invested in new car purchases by consumers.

In addition, I would like to comment in response to Mr. DeMuth in terms of the cost benefit of the work done by this administration that just for standard 208 alone, William Nordhaus, formerly on the Council of Economic Advisers and now professor at Yale, documented that $30 billion in costs, quantifiable costs, alone would be paid by the American public for just the 1984 model year cars if standard 208 were revoked.

I would also like to dispute what Mr. DeMuth said in his testimony, that tax expenditures or taxes are among those that are subject to cost-benefit analysis—and I am sure, as a member of the Senate Finance Committee, Mr. Chairman, you know that tax expenditures are not subjected to cost-benefit analysis the same way that health and safety standards are.

The outrage that many organizations feel about the administration's action on standard 208 has caused us to form a new organization which I would like to announce today. It is the National Coalition to Reduce Car Crash Injuries. It has at the present time 42 organizational members, including consumer, medical, and insurance groups; and I would like to submit for the committee consideration a list of those organizations and some other relevant material.

I would also like to say that in terms of the loss of life that has occurred in the 2 years of delay that we now have already in the standard, that we are going to lose 18,000 lives and 130,000 needless injuries—if Mr. DeMuth would like some help with those figures.

The deep involvement of the Office of Management and Budget in the decisions concerning standard 208 have really, I believe, been quite well documented. And the one point that I think is terribly important to make is that it appears that the best alternative that Secretary Dole is going to be able to eke out of this ideological mania in the White House is a demonstration project somewhat like the demonstration project recommended by Secretary William Coleman.

Incidentally, the last time the White House gave instructions to the Department of Transportation on this standard, President Nixon insisted, at the suggestion of Henry Ford and Lee Iacocca,

that the Department issue the seatbelt ignition interlock standard which was not recommended by the Department, but was a White House request.

I would like to say that there is an important point, if I could have one second, Mr. Chairman, between demonstration projects and demonstration projects. The first is that Secretary Coleman endorsed the technology of airbags but said a demonstration project was needed in order to test public reaction. And since he made that statement, a number of GM marketing studies and other reports have shown that the airbag has great popular appeal.

NHTSA has also recently prepared a study by National Analysts, a division of Booz-Allen-Hamilton, which I would like to submit for the record, which shows a study of why GM did not sell the airbag in 1974 to 1976. And it points out that GM never marketed the airbag during that period.

By contrast, Mercedes Benz, which has been offering the airbag in the driver side only in Europe since January 1981, has been selling them at a 17-percent rate, which is a fairly high rate for a brand-new system, and particularly one that has been subject to such criticism from the industry as has airbags. So I think that is an important point.

I would like to say one last thing, if I could, and that has to do with the side impact standard. You asked Ms. Steed why the standard was withdrawn, and I would like to tell you why.

In July 1982 the advanced notice of proposed rulemaking was withdrawn. In January 1980 the Department had an extensive 2-day conference with the auto industry, and that advance notice was more than just a request for information. It was a very extensive documentation of the need for the standard and how to go about carrying it out.

In the winter of 1981 the Department of Transportation formed a cooperative research agreement with the U.S. auto manufacturers through the Motor Vehicle Manufacturers Association, and the lawyers discovered that they had this rulemaking pending, and it was inappropriate to have secret discussions going on with the industry during the pendency of that rulemaking, and so the rulemaking was withdrawn, but the public was never told that this was the reason why.

In testimony in the House of Representatives in the winter of 1982, DOT was chastized for this secret group. They then put out a public announcement that they were going to abandon it. Then they refused to abandon it. Public Citizen sued them, and the Justice Department has recently asked us to settle the case with an agreement to be made saying NHTSA would discontinue the secret research program.

So that is the reason that the side impact rulemaking was withdrawn. I just want to correct the record.

[The statement follows:]

STATEMENT OF JOAN CLAYBROOK

Mr. Chairman, I appreciate the invitation to testify today at these Oversight Hearings on the National Highway Traffic Safety Administration (NHTSA). My name is Joan Claybrook and I am President of Public Citizen, a national public interest organization concerned with public health and safety and government and

corporate accountability. I served as the Administrator of the NHTSA from April 1977 to January 1981.

In March 1983 the Department of Transportation prepared a report from its National Accident Sampling System which highlighted the following facts:

"Almost two-thirds of the serious accidents involving cars were frontal or front-angle collisions" (the type in which air bags protect occupants).

"Only 9 percent of accident-involved occupants were restrained."

"Brain and spinal cord injuries accounted for about 60 percent of all fatalities for which details of trauma were available."

The government and the auto industry know these facts well. They also know that auto crashes are the largest cause of death and serious injuries for Americans under age 34, the largest cause of paraplegia and quadriplegia, and a major cause of epilepsy. They cost the nation over $57 billion dollars in quantifiable losses each year. Each day, more than 120 Americans die in auto crashes, the equivalent of a major airline crash every day of the year. President Reagan condemned the Russian attack on the Korean Airline carrying 269 people as a "Massacre" and an "act of barbarism." Surely the question must be asked whether failure to issue Standard 208 with its potential to save 9,000 lives each year and to mitigate more than 65,000 injuries is anything less. The Administration refuses to face up to the fact that on the average, every ten minutes 24 hours a day, 365 days a year, another American is killed in an auto crash and every 10 seconds another person is injured.

It is hard for us to believe that just over 14 years ago, the Department of Transportation issued its first rulemaking notice amending Motor Vehicle Safety Standard 208 to require that air bags be designed into motor vehicles sold in the United States to automatically protect occupants in crashes. In spite of its life-saving potential, and review and endorsement by two U.S. Courts of Appeal and most recently the U.S. Supreme Court, the standard is still not in effect. Instead, the Administration's die in auto crashes, the equivalent of a major airline crash delay thus far in not implementing Standard 208 will result in at least 18,000 needless deaths and 130,000 needless serious injuries, and Standard 208 is embroiled in President Reagan's deregulation mania under the thumb of Office of Management and Budget director David Stockman. As a Representative from Michigan, Stockman in 1979 and 1980 tried but failed to get the Congress to overrrule the standard and to substitute instead his so-called freedom of choice option endorsing manual belts. Recently, one "high ranking aide to President Reagan" told Wards Auto World, "The administration plans to fight this challenge [The Supreme Court Mandate] all the way. If we lose, the worst the carmakers should expect might be an automatic seat belt requirement some years down the road." As this statement reveals, the auto companies are the movers and shakers behind the government's attack on air bags. Until 1974, when Edward Cole left his post as General Motors President, GM was an avid supporter of their air cushion restraint system. Since then, however, GM has joined most other automotive companies in opposing implementation of Standard 208. They are apparently more interested in proving that the government can't tell them what to do than they are in preventing casualties among the purchasers of their vehicles.

The deep involvement of the Office of Management and Budget in decisions concerning Standard 208, arm in arm with the auto companies, has caused the science of auto safety to be suffocated by political ideology. The revocation of Standard 208 by Secretary of Transportation Drew Lewis on October 23, 1981, ofers a good example. First, the political decision was made to revoke the standard. Then an obscure rationale was forged which argued that the standard must fall because it would save few, if any, lives since most occupants would not use the detachable automatic belts the Detroit manufacturers said they would install. The Supreme Court on June 24, 1983 rightly rejected this bizarre justification as arbitrary and capricious, and chastized the agency for ignoring air bags:

"Given the effectiveness ascribed to airbag technology by the agency, the mandate of the Safety Act to achieve traffic safety would suggest that the logical response to the fault of detachable belts would be to require the installation of airbags. At the very least this alternative way of achieving the objectives of the Act should have been addressed and adequate reasons given for its abandonment. But the agency not only did not require compliance to air bags, it did not even consider the possibility in its 1981 rulemaking. Not one sentence of its rulemaking statement discusses the airbags only option."

Despite the unanimous view of the Burger Supreme Court, there is every reason to expect that Secretary Elizabeth Dole, who has spoken favorably about airbags, will be instructed by the Reagan White House to prevent final adoption of the standard. The last time the White House gave DOT instructions on Standard 208,

President Nixon insisted, at the suggestion of Henry Ford II and Lee Iaccoca, that the seat belt interlock system be substituted for airbags. Two years later, the Congress prohibited the interlock devices. At best, Secretary Dole is expected to argue for permission to emulate Secretary of Transportation William Coleman who was in a similarly awkward position in the Gerald Ford Administration.[1] Emulating Secretary Coleman means development of a so-called demonstration fleet of air bag equipped vehicles to test public reaction. But it is not at all clear today what the Reagan Administration would suggest be demonstrated or how many vehicles would be equipped. Secretary Coleman in 1976 made it known that he endorsed the air bag technology and believed that it had been fully proven and was ready to use. But he wanted to establish whether or not there was a broad base of public opinion supporting the standard.

Since this concept of demonstration fleets is developing into a premier excuse for not putting Standard 208 into effect, it is worthy of a few comments.

First, Secretary Coleman's contracts with Ford, GM, and Mercedes to produce 40,000 to 400,000 air bag equipped vehicles in 1980 and 1981 were not enforceable. The companies could back out at any time. And it is unlikely that any other kind of contract would be accepted today.

With regard to public acceptance, since Secretary Coleman left office, a number of marketing and research reports have documented the broad public interest in being able to buy an air bag system, including a Gallup poll in 1977, showing a clear majority of the public favoring the standard.

In 1979, GM revealed, following a request from former Congressman John Burton (D., Calif.), that it had conducted marketing studies of public acceptance of airbags among GM purchasers. These studies were prepared in 1971, 1978, and 1979. The most recent one showed that about 70% of the large car GM purchasers would buy an airbag system with their vehicle at a cost of up to $300. In 1978, a survey by Peter Hart for DOT found strong consumer interest in buying air bags.

GM never refuted these findings but did argue frequently that when air bag equipped cars were offered for sale to the public in 1974 through 1976, GM was unable to sell them in large numbers.

This claim has been refuted by a number of sources. In 1976, Albert Karr, a reporter for the Wall Street Journal, wrote a lengthy article explaining how difficult it was for an interested purchaser to buy a GM air bag car. In 1979 GM President E. M. Estes acknowledged on The Today Show that General Motors had done little to promote the sale of its air bag equipped vehicles between 1974 and 1976.

More recently, a study for the NHTSA by National Analysts, a division of Booz-Allen & Hamilton and a firm used widely by car makers themselves, concluded that the GM airbag marketing program in 1974 through 1976 was unsuccessful for reasons unrelated to consumer interest in buying airbags. It found that the large cars in which GM installed the air bags suffered reduced sales from the 1973 Mideast oil embargo (GM's installation rate of air bags never exceeded 1 percent of those cars which were sold), thus causing dealers to sell cars in inventory rather than special order air bag; GM made a basic marketing error in its decision to emphasize convenience of the air bag as compared with the seat belt interlock system being installed in all other vehicles rather than touting the air bag safety characteristics (the safety of the air bag was virtually ignored); the air bags were price sensitive and consumers were not sure how they worked; and fourth, GM did very lettle promotion, did not prepare its dealers to sell these cars and allocated them in a way which emphasized the lower cost of the non-air bag vehicles.

Most recently, since January 1981, Mercedes Benz has been offering driver side air bag systems in their large and their new small cars in most countries except in the U.S. In the two and one-half years since Mercedes first offered these systems, 17 percent of the buyers of their larger S class vehicles have purchased the driver side air bag system at a price of almost $1,000 per car.[2] Mercedes has advertised and promoted air bags and has had air bag equipped vehicles readily available at dealerships, two steps GM failed to take.

The Department of Transportation has initiated several small air bag fleet contracts recently. It is in the process of contracting with the GSA and Ford Motor Company for 5,000 1985 model Topaz vehicles to be equipped with driver side only air bag systems for the GSA fleet. NHTSA is paying for the air bags. The GSA fleet

---

[1] While a member of Congress from Michigan, Mr. Ford for years advocated the auto industry's interests.

[2] The U.S. auto companies are citing this price to suggest it reflects the cost of an air bag system. However, it does not. The Mercedes volume of production is very small, and the air bag cost is very volume sensitive.

concept was first recommended by Mr. Ralph Nader to Mr. Gerald Carmen, Administrator for GSA, and to the NHTSA as a way of encouraging one or more automotive manufacturers to begin producing some air bag equipped vehicles even in the absence of the federal standard. Recent statements by DOT suggest that the additional purpose of this fleet is to "document the fatality and injury-reducing effectiveness of new generation air bag systems." However, the technology to be "tested" is basically the same as that sold to the public by GM in 1974–1976.

In addition, the sample is far too small for any valid statistical analysis. The House Appropriations Subcommittee on Transportation recognized this in its June 16, 1983 report: "The Committee is aware that a substantially larger test fleet is needed to produce meaningful field data on air bag accident performance. The Committee urges NHTSA to intensify its efforts to persuade larger fleet buyers to purchase air bag equipped vehicles in order to establish a statistically significant demonstration fleet by the model year 1986." Any so-called test fleet would have to exceed 500,000 vehicles to provide results in 30 to 36 months. At least 100,000 vehicles would have to be on the road for a number of years to produce statistical results. None of these issues have been addressed by DOT. The purpose of the GSA fleet is obscure. Ford has indicated that it has the capacity to produce at least 35,000 Topaz vehicles but it does not intend to sell these vehicles to the public. Thus, a few federal workers, and perhaps a few corporate fleet users, to be solicited by DOT, will have air bag protection, while the general public, since 1976, still cannot purchase this safety system.

The NHTSA is preparing two other 500 vehicle test fleets for retrofit airbag systems to determine if retrofit is feasible and reliable. However, none of these test fleets for demonstration projects are in any way a substitute for motor vehicle safety Standard 208 and the broad scale availability of air bags or effective automatic safety belt systems to protect occupants in frontal crashes were 55 percent of the deaths occur.

During the past decade, the rationales used by the government to not issue Standard 208 and by the auto companies to not manufacture air bag cars, have resembled Alice in Wonderland—upside down and inside out. In addition to public acceptance, another myth—and excuse—from the auto industry not to manufacture and market air bags was debunked by the National Analysts Study. The study found that any effect price increases for air bags might have on sales would be transitory, lasting not more than a year, and that any jobs lost among auto assemblers would probably be offset by increased employment of people building airbag systems. In any event, there would be virtually no effect on car company revenues.

Ronald Reagan attempted to perpetuate the myth during the 1980 campaign. He told Detroit auto workers, who have been laid off in droves since he got elected:

"I'd like to get rid of several thousand of what I think are unnecessary regulations that have caused your problems. We'll give government regulations a major overhaul, and prove you don't have to lay people off to have clean air, safe cars, and good fuel economy." (Washington Post 9/2/80).

And Vice President Bush, in announcing the deregulation of auto safety and emissions standards in April 1981 to help Detroit economically, claimed the President's auto recovery program would help put 200,000 unemployed auto industry workers back in their jobs by the end of 1982. By mid-1983 most laid-off workers have not returned.

Executives from GM and Ford have claimed with some frequency that the increase in cost for airbag equipped vehicles would make them less competitive than non-equipped vehicles. This, of course, presumes that people are not willing to pay for additional safety built into their vehicles, a proposition with little merit. It also contradicts a statement on July 21, 1983 by Mr. Garald Greenwald, Vice Chairman of the Board of Chrysler before the House Energy and Commerce Committee:

"We are dealing in subjectivity. I admit I can only give you my opinion, and that is, the new care purchase is a one-time and unusual event for the consumer, and that person faced with paying $8,000, $9,000 or $10,000 depending on the type of car they are going to buy, I do not think will be deterred in a range of $200 or $300 in price."

The key issue as to whether or not consumers are willing to pay, of course, depends on how much. In 1977, GM said full front seat air bags would be priced at $193. In the last two years General Motors and Ford have promoted the idea that airbags would be priced at $1,000 a car. What they fail to reveal is that this price tag (and please note that it is not a cost nor necessarily a cost-based figure) is based on very small volume sales in the 5,000 to 25,000 vehicle range.

By contrast, the Automotive Occupant Protection Association (AOPA), composed of air bag suppliers, recently estimated that with mass production, an increase in

the price of a vehicle by $185 for air bags in the full front seat would not only cover costs but would be profitable for the auto industry. The key to the price tag is sales volume, and this of course is a decision controlled by the manufacturers. If the system is modestly priced, effectively promoted, and readily available in the dealer showroom, sales volume will be far higher.

The third excuse for industry opposition to Standard 208 has been based on technological objections. Interestingly, these issues have been raised by the auto industry or their friends on Capitol Hill for approximately 12 years and in every instance, the concern or complaint about the technology has been fully discredited. It began in June 1970 with full page advertisements by Henry Ford II claiming (incorrectly) that hearing could be impaired by the noise of the air bag inflation. Complaints were raised about the efficacy of the surrogate dummy and the repeatability of the tests. Other political attacks included inaccurate claims that the sodium aside inflator system was dangerous and that the air bag inflation could cause harm and possibly even death to small children sitting in the front seat out of position, perhaps kneeling or sitting on the floor or leaning up against the dashboard.

With respect to noise, it turned out that the noise of the crash far exceeded the noise of the air bag. The surrogate was readily upgraded. The sodium aside was selected by the industry because of its stability and long life, and with the hermetically sealed inflator system and many built-in filters, this chemical does not come in contact with the public. As for disposal, the air bag need only be inflated to dispose of the chemical. And with regard to out of position children, the NHTSA hired an experienced automotive testing engineer who documented that GM had inappropriately placed its air bag system underneath the dashboard to avoid moving the air conditioning system. If it were installed at the top part of the dashboard, the air bag would not interact with out of position children. In August 1980, GM finally admitted, to a visiting group of college debating students, that there were no technological problems with air bags and GM could design air bags for any size car it manufactures.

Finally, with regard to technological issues, Mercedes Benz has been selling air bag equipped vehicles abroard since January 1981 and has announced that this fall it will begin selling its large W126 series and its new small W201 vehicles equipped with driver side air bags to the U.S. public. It is unlikely that Mercedes would have taken this step had any technological problems existed.

The most interesting point about the air bag technology is its creative potential. First of all, it is a very simple technology, far less complex and costly than the air conditioner or the automatic transmission which the auto industry introduced in small numbers as optional equipment in the late 1940s and early 1950s. The air bag technology is magnificently flexible. Air bags can be large or small. They can be designed with an air bag inside another air bag to enhance the energy absorbing characteristics or to cover a large area. The air bag can be inflated rapidly or slowly, or at variable speeds, depending on the severity of the crash. It can be designed with an aspirator inflator that is very sensitive to obstacles and will move out of their way while it continues to inflate. The air bag can be designed with porous materials so that the air seeps out of the bag as soon as it has been inflated to further enhance the energy absorbing characteristics. It can be designed with different types of inflators, both chemical and stored gas. It can be designed to be electronic or mechanical. It can be designed into the car as originally produced or, in some circumstances, it can be retrofitted into existing models. Newly designed mechanical inflators dramatically simplify the system, cut costs and facilitate retrofit.

With sensor systems developed and used by the military for decades, the sensors needed for air bag inflation have been tested in millions and millions of applications. Weapons systems and air bags have similar requirements for sensors: The systems must be stored for long periods of time without use, they must be resistant to adverse environmental effects, they must always be ready to work in an instant when needed, and they must be able to distinguish between false signals such as a very low speed crash or transportation of weapons along a bumpy highway, on the one hand, and a signal to actuate to meet genuine emergencies on the other.

It should be noted that NHTSA officials acknowledged in Congressional hearings before the House Science & Technology Committee in December 1982 that their goal for voluntary belt use is 30–40 percent by 1987. By contrast, if Standard 208 had not been rescinded, at least 35 percent of the fleet would be equipped with air bags or belts that work automatically by that year, and each year thereafter another 10 percent of the fleet would be equipped, providing crash protection much faster than would occur based on unsupported estimates of belt usage.

Although much of the government's work to quantify and characterize the benefits of automotive safty regulation has either been discontinued or submerged, a

study initiated several years ago by the Department of Transportation and completed last summer reports on the "Effects of Automobile Accidents upon American Families". The report concludes:

"In some families financial costs paled in comparison to victims' continuing pain, disability, and psychological stress and other family members' emotional strain and added burdens of care. In others, economic hardship blighted the victims' convalescence and rehabilitation and deepened the entire family's misery. In all families, the quality of life deteriorated markedly for at least a year, and in some, accident-related problems have persisted for much longer periods and may affect succeeding generations."

"Social costs of serious accidents are far-reaching. Healthy, productive individuals are lost or reduced to dependence upon others. Relatives, friends, neighbors, and many professionals divert energy from far more constructive tasks to remedial and maintenance efforts. Time consuming litigation stemming from motor vehicle accidents clogs the courts and often produces unsatisfactory results."

A related DOT study of "Children in Automobile Accidents: the Effects on the Family" found that,

"Professionals concerned with auto safety have only recently begun to explore the repercussions of automobile accidents. There has been an emphasis on statistical data that implicitly distances researchers from the controversial and emotional material. Our understanding of the effects of automobile accidents in which children are killed is limited by a reporting of primarily quantitative data. For instance, over 21,000 children between the ages of birth to 24 have been killed in highway accidents between 1975 and 1979. Research that addresses the emotional cost to family and society, the high incidence of family erosion and decay and role transitions that occur within the family is negligible."

The report cites a number of examples including one where the death of the seven year old son in an automobile accident "precipitated such an intense emotional reaction that Mr. Marcus has been unable to return to work for almost three years after the death." As one family member said, "When you lose your parent you lose your past, when you lose a child, you lose your future."

In deciding whether American families should have the opportunity to be protected by automotive safety systems built into cars, the Reagan Administration touted economic analysis as the basis for its decision making process. While Reagan's Executive Order 12291 requires agencies to conduct cost/benefit analyses to "objectively" measure the merits of various proposals, in practice the Office of Management and Budget, which lacks the scientific expertise to evaluate health and safety standards, has assiduously ignored documented benefits and manipulated the regulatory analysis process to conclude that standards were not cost beneficial.

Mr. Chairman, beyond the attack on Standard 208, there has been a systematic dismantling of the NHTSA safety programs in direct conflict with NHTSA's statutory mission to protect the driving public. Motivated by ideology and contemptuous of scientific facts, the Administration has openly attacked or covertly neglected the other major life saving programs under the agency's aegis: Motor vehicles safety standards, motorcycle safety, and the 55 mile an hour speed limit. Each of these programs has been scientifically shown to save thousands of lives and mitigate hundreds of thousands of injuries each year.

The vehicle safety standards instituted since 1968 have saved the lives of an estimated 80,000 Americans. The NHTSA has estimated that 27 fatalities are avoided today because of these standards for each $1.00 per car price increase to pay for these standards. Yet, the rulemaking activities directed at improved side impact protection and pedestrian protection, both standards which could save many thousands of lives each year, have been virtually abandoned. Indeed, the agency's April 1983 report on "Planning for Safety Priorities, The 1983 Safety Priority Plans," lists a number of areas which were previously priorities for the safety standard rulemaking. However, the report notes only that research is underway or reports on research will be prepared in the next several years. In no case is there any commitment to issue vehicle safety standards. And the major budget priority for NHTSA rulemaking is "harmonization," the process of making cooperative agreements with foreign governments concerning safety standards that take years to complete.

Beyond ignoring the 55-mile hour speed limit and the motorcycle helmet use laws which have saved many thousands of lives every year, at a deeper level the Administration has inflicted lasting institutional damage on the NHTSA. The scientific and engineering expertise of the agency has been seriously weakened, demoralized, and misdirected. Internal reorganizations and reassignments, RIFs and early retirements have resulted in the loss of more than 200 NHTSA staff, one-quarter of its work force comprising hundreds of years of expertise.

The agency no longer conducts its work in an open, accessible manner, as benefits a federal agency in a democracy. Instead, it has pulled a veil of secrecy over its enforcement actions, defects investigations, technical and data files, and communications with the auto industry—a process that keeps the public out and corporate procrastinators in. Several law suits and the X-Car defect cover-up revealed by the press in January 1983 have pierced this veil somewhat in recent months and caused the government to take some positive steps. However, crash test results are released after the pertinent model year has passed. The tire quality grading standard provision for treadwear grading has been eliminated (this now being challenged in the federal courts). A secret research program with the Motor Vehicles Manufacturers Association, euphemistically dubbed the "cooperative research program," is going to be discontinued following a suit by Public Citizen challenging its violation of the Federal Advisory Committee Act. That Act requires balanced representation, public notice, open meetings, and transcripts for any continuing series of advisory meetings with parties outside the agency. Furthermore, the first annual report to Congress by this Administration was submitted nine months after the statutory deadline. The second one, due 14 months ago, has yet to be submitted and the third one, due last July is no where in sight.

Publications have been recalled with an energy not applied to the recall of dangerous cars. Citizen access to agency information such as films, reports, brochures and library materials have become much costlier, more difficult or flatly impossible to acquire. The research safety vehicle technology which toured the nation to rave views in years past is now locked up in the DOT basement and rarely available to the media or the American people.

Mr. Chairman, it is time to call a halt to the destruction of people and programs and to place a priority back where it belongs on saving lives. We endorse your legislation, S. 1108, which calls upon Congress to rectify the Administration's misdeeds. Regulation to protect the public health and safety by preventing harm before it occurs is the most sensible approach to preventing death and injury. As Henry Ford II said on "Meet the Press" on October 30, 1977:

". . . We wouldn't have the kinds of safety built into automobiles that we have had unless there had been a federal law. We wouldn't have had the fuel economy unless there had been a federal law, and there wouldn't have been the emission control unless there had been a federal law."

Senator DANFORTH. Thank you.

Mr. Dunlap.

Ms. SHAHAN-DUNLAP. Thank you, sir, for inviting me.

I am here from California where I am president of a consumer group called Motor Voters. I have testified in Sacramento, but never before in Washington, and I am honored to have been invited.

In California we are known for starting the Lemon law. We are used to fighting the auto manufacturers and winning. They used to call me the Lemon Lady, and now they are calling me the "Bag Lady."

In California we are known for having a love affair with our automobiles. The auto manufacturers seem to feel that when they give us the key ring they are saying, "With this ring I thee wed." Now there are grounds for divorcing your car in California. We want to make it clear that we never intended to marry our cars "until death do us part."

There is a growing sense in California that while it may have been all right to bail out the auto industry with bucks—which can be repaid—it is not OK to bail it out with blood. There could not be restitution for that. There is no repayment.

We have a special interest in auto safety standards in California because every year we lead the Nation in the front seat death toll which airbags address. In fact, in 1981 alone, 1 out of every 47 licensed drivers in California was in a fatal or injury accident. Traffic accidents are costing California, according to the CHP, about $6

billion a year. Every year a thousand Californians die, and tens of thousands suffer disabling injuries unnecessarily because of lack of airbag protection.

We have some of the toughest drunk-driving laws and provisional licensing laws for 16- through 18-year-olds in our State. The taxpayers, physicians, motorist, and victims' groups and the media are all concerned about doing their part to reduce the toll, and all we are asking is that the auto industry also be regulated to do its part.

Lee Iacocca in San Diego on August 31 told me in response to a question about how much rescission of the passive restraint rule has saved Chrysler Corp., "A ton of money." And he said that if people do not wear belts, then "To hell with you!" He is talking about 85 percent of the motoring public.

I am outraged. Other groups are outraged. There is growing support for airbags among grassroots groups which represent real live constituents. For instance, the Consumer Federation of California is a federation of consumer groups, labor groups, seniors groups, and cooperatives representing millions of Californians. This year it passed almost unanimously a resolution in favor of mandatory airbags in all cars sold in California.

Also joining us: the California Public Interest Research Group with 60,000 members throughout the State. Medical groups—the American Academy of Pediatrics chapter in Los Angeles, the Committee on Automotive and Traffic Safety of the California Medical Association which passed a unanimous resolution for mandatory airbags for all cars sold in California, the Trauma Center Foundation in San Francisco. Also, the National Head Injury Foundation and its Los Angeles and San Diego chapters, and Volunteers in Victim Assistance. I bring letters from these groups, and others will be submitting testimony for the record. Most notably, our State Senator Diane Watson, who is Chair of the Committee on Health and Welfare, has decided to hold hearings in California on auto safety as a public health issue, and if necessary, introduce legislation requiring that airbags be made available to Californians as standard equipment.

The law firm of Arnold & Porter, which recently won the Supreme Court suit, is researching exactly what California can do as a State.

I would just like to say something to the previous speaker from OMB, Mr. DeMuth. He gave the San Diego Union a nice interview. They asked him if he thinks that the consumer interest groups and Nader groups pushing for more regulations have diminished political clout, and he said he thinks their clout is greatly diminished. "I make a distinction between consumer groups and environmental groups. Environmental groups, I think, have a great deal of clout, but frankly, in Washington, aside from a few outputs of consumerist fever in Congress, I do not find many people who take seriously the kind of nonsense we heard of in the 1970's—appliance energy efficiency standards, bumper standards for automobiles, et cetera.

Then finally he says, "I think people see that a lot of these consumerist issues have been really silly."

I wish he could see the face of a mother whose child was head-injured when she sees what an air bag would have done to save her child from that injury. Lives are involved here, and the public

health. I think this kind of contempt for consumers is reprehensible and very dangerous, and we are not going to stand for it in California.

Thank you, sir.

Senator DANFORTH. Thank you very much.

I just have one question, and it is for Ms. Claybrook.

You are the former administrator of NHTSA. This is an oversight hearing NHTSA. What kind of a job do you think it has been doing in the last 2½ years?

Ms. CLAYBROOK. Mr. Chairman, a year ago I prepared a report called "Reagan on the Road: The Crash of a U.S. Auto Safety Program," and in that report I documented the outrage that I feel at the revocation of safety standards that save lives. A good example would be the steering wheel, the steering column standard. We discovered that it was not doing a sufficient job; that it did save lives, but it could do much more. We began some research on it. The agency has since in several different reports documented that the steering column is a major killer still today in auto crashes. And one of the things that would stop it from being a major killer, of course, is standard 208.

And, in addition, we prepared to initiate rulemaking. All of that is completely abandoned. There has been a cutback of one-quarter, 25 percent of the agency's staff. The research budget has been reduced. A safety belt promotion program has been started in which the agency has admitted that the maximum seat belt usage they anticipate is 30 to 40 percent.

If you had the automatic restraint standard in effect for 4 years, you would have 40 percent of the cars equipped with automatic protection, so you would far outdistance any seat belt program that NHTSA now predicts they can achieve.

And you have had the research safety vehicle which was designed and showed what the auto industry could do, that has been locked up in the DOT basement. You have had annual reports not submitted to the Congress. This committee was owed an annual report 14 months ago. It has not yet arrived yet. And it has another one that is now 3 months late. And if you would like, I would be glad to represent you in court and sue the Department because that looks as though that is the only way that we can get them to behave.

Senator DANFORTH. Thank you both very much.

The next panel: Mr. James Corcoran, Mr. Lowell Beck, Mr. Donald Schaffer.

Mr. Corcoran.

STATEMENTS OF JAMES CORCORAN, SUPERINTENDENT OF INSURANCE FOR THE STATE OF NEW YORK, REPRESENTING THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS, ACCOMPANIED BY PETER GILLIES, INSURANCE COMMISSIONER, STATE OF CONNECTICUT; LOWELL BECK, NATIONAL ASSOCIATION OF INDEPENDENT INSURERS; AND DONALD L. SCHAFFER, SENIOR VICE PRESIDENT, GENERAL COUNSEL, AND SECRETARY, ALLSTATE INSURANCE CO.

Mr. CORCORAN. Good morning, Senator.

Before I start my statement, I think, in summary, what I will try to do here is demonstrate that on an insurance basis alone we can meet the economic criteria that OMB seems to establish for its guidelines. If this is not a political question, and there are some economic realities here, I believe my statement will demonstrate that there is absolutely no merit to their argument.

Senator DANFORTH. Which argument is this?

Mr. CORCORAN. The argument of cost efficiency.

Senator DANFORTH. Of—with respect to passive restraints?

Mr. CORCORAN. With respect to passive restraints, airbags.

I am James Corcoran. I am superintendent of insurance for the State of New York, and I thank you, Senator, for inviting me to testify this morning.

On my right is Commissioner Peter Gillies of the State of Connecticut who is also here to support my statement.

My testimony today is given on behalf of Governor Cuomo and the people of the State of New York, as well as the National Association of Insurance Commissioners.

The association is comprised of 55 insurance regulators throughout the country and the territories of the United States. As superintendent of insurance, I regulate some 231 insurers who provide automobile insurance coverage for about 7 million passenger automobiles in New York State. I will focus today simply on the most prominent issue of airbags. This is a prime example of the ways in which shifting political ties have interfered unduly with the administrative law process, resulting in unnecessary carnage and deaths of thousands of Americans with a consequence of economic impact to their families and the loss of potential savings to consumers.

The present administration has imprudently attempted to rescind a traffic safety regulation requiring new cars to be equipped with airbags or automatic seat belts. In the interest of Governor Cuomo and the National Association of Insurance Commissioners, the issues at hand are twofold.

First, we share the concern of all sensitive persons with the great toll in deaths and injuries paid each year on the Nation's highways. Second, as a State regulator we are concerned with the affordability of insurance products. It is our responsibility to see to it that the economic savings resulting from improved motor vehicle safety features are passed adequately, equitably, and promptly to the insurance consumers.

Passive restraints are not merely lifesavers; they also make good economic sense. Recent developments in technology have permitted a reduction in the size and the weight of airbag equipment. The latest cost estimate, as has been testified here, is about $200. The average price of an automobile, about $11,000. This additional cost can readily be justified. It reflects less than 1 day's hospital costs.

In contrast, the economic cost of not providing passive restraints such as airbags is staggering. Virtually every economic analysis has concluded that the benefits of these restraints far outweigh their costs. Professor Nordhaus concluded that the net economic benefit to society of automobile restraints would be about $2,400 million a year.

The National Highway Traffic Safety Administration estimated the cost of each death to be about $268,727 and each serious injury at about between $2,000 and $190,000.

Passive restraints will also result in direct savings to consumers in the form of reduced automobile insurance premiums. It is expected that for cars equipped with passive restraints, a 25- to 30-percent discount on the average medical portion of the New York no-fault premium would be appropriate. This results in savings of about $330 for a vehicle's coverage life of about 10 years. Assuming an anticipated reduction of only 15 percent per year on the average bodily injury liability premium in New York based on reduced severity and frequency of injuries, it is estimated that there will be a further reduction of another $330 over the same 10-year period for a total of $660 in savings.

A majority of insurers writing automobile insurance in the State of New York have recognized the potential cost savings which result from the installation of passive restraints. Insurers have already filed in my office for premium discounts of up to 30 percent on both the no-fault and medical payment insurance for automobiles equipped with passive restraints.

I am recommending that the National Association of Insurance Commissioners adopt model legislation which would require that all automobile insurers to provide appropriate premium discounts for no-fault medical payment, and bodily injury liability coverage on insured vehicles equipped with passive restraints.

I will mandate such reductions in New York State to insure that the savings to insurers are reflected in the premium rates charged to the public.

Reduction in the number of deaths and frequency and severity of personal injuries resulting from collision will, in addition, necessarily lessen the burden on private life accident and disability insurance, workers 'compensation systems, Federal survivorship and disability insurance, supplemental security income, aid to families with dependent children, and various State public assistance programs.

These public costs were not given adequate consideration by the National Highway Traffic Safety Administration. Overall, airbags would provide the greatest savings in lives and dollars, and I think they will be most acceptable to the public.

I, therefore, support title I of S. 1108, the Highway Safety Act, in that it would mandate the installation of airbags in all vehicles manufactured on or after September 1, 1985. Congress must take action now in order to save lives.

Passive restraints or the airbag issue is one of the most controversial and well-documented regulatory issues of all time. Recounting its history should bring great shame to the automobile manufacturers and most recently to the administrators within the National Highway Traffic Safety Administration.

It is a classic example of an inherent flaw in the administrative rulemaking process in that when the stakes are high enough and the adversaries well financed, debate can be extended indefinitely. The American public has now been denied the potential benefits of effective passive restraints for nearly a decade. We are all familiar with the litany of delays and postponements that have occurred

since 1972. Only the recent decision of the Supreme Court gives us some hope that there may be light at the end of the tunnel.

Given the Supreme Court's guidance, the course of action that the Department of Transportation ought, in good faith, to take is clear: the passive restraint standard with the earliest possible effective date should be reestablished. It is a shame that we have to take things purely on an economic basis, but if that is the way we have to do it and count lives and count dollars, we can surely justify mandated air bag systems on economics alone.

[The statement follows:]

STATEMENT OF JAMES P. CORCORAN, SUPERINTENDENT OF INSURANCE OF THE STATE OF NEW YORK

Good morning, my name is James P. Corcoran, and I am the Superintendent of Insurance of the State of New York. I wish to thank Senator Danforth and the members of the Surface Transportation Subcommittee for their invitation to testify at this hearing on oversight of the activities of the National Highway Traffic Safety Administration.

My testimony today is given on behalf of Governor Mario M. Cuomo, the people of the State of New York and the National Association of Insurance Commissioner. The National Association of Insurance Commissioners comprises the 54 insurance regulators from every state, commonwealth and territory of the United States. As Superintendent of Insurance, I regulate some 231 insurers who provide automobile insurance coverages for more than seven million passenger automobiles registered in New York State.

I would like to focus on the most prominent issue with which the National Highway Traffic Safety Administration has been concerned in recent years, passive restraints. My prepared text also urges restoration of adequate bumper standards. These are prime examples of ways in which shifting political tides have interfered unduly with the administrative law process. The result has been unnecessary carnage and death of thousands of Americans with consequent economic impact to their families and the loss of potential savings to consumers which would follow from reduced injuries and collision damage.

The present Administration has imprudently attempted to rescind a traffic safety regulation requiring new cars to be equipped with air bags or automatic seat belts. Fortunately, the Supreme Court of the United States, in June 1983, unanimously ruled that the Administration had been "arbitrary and capricious" and had violated the 1966 National Traffic and Motor Vehicle Safety Act requirement that the government adopt standards for passive restraints which would promote motor vehicle safety. The New York State Insurance Department, through my predecessor, intervened in this litigation, and the National Association of Insurance Commissioners appeared as *amicus curiae* to urge that the Court find that the National Highway Traffic Safety Administration's actions were in violation of the federal law's mandate.

The interests of Governor Cuomo, the National Association of Insurance Commissioners and myself in the issues at hand are two-fold. First, we share the concern of all sensitive persons with the great toll in deaths and injuries paid each year on the nation's highways. Second, as state insurance regulators, we are concerned with the affordability of insurance products, and it is our responsibility to see to it that the economic savings resulting from improved motor vehicle safety features are passed on adequately, equitably and promptly to insurance consumers.

Motor vehicle crashes are the leading cause of death of persons under the age of 35 years. They are also the leading single cause of paraplegia, quadriplegia and traumatic epilepsy. The burden of these deaths and serious injuries falls heaviest on young people. Motor vehicles account for nearly half of the deaths of 16–19 year olds in the United States.[1]

The presence of air bags or other equally effective passive restraint system for the front seat passengers of all motor vehicles will, each year, save thousands of lives and prevent many thousands of moderate to serious injuries. Dr. William Nordhaus, Professor of Economics at Yale University, who is a former member of the President's Council of Economic Advisers, testified during the course of administrative

[1] R. S. Karpf and A. F. Williams, "Teenage Drivers and Motor Vehicle Deaths," "Accident Analysis and Prevention," Vol. 15, No. 1 (1983), pp. 55–63.

proceedings that the failure to employ passive restraints would result in an annual increase of 6,400 fatalities and at least 120,000 moderate to critical injuries resulting from front-end collisions.[2] Had we begun to install passive restraints such as air bags in all new cars beginning with 1975 models, as required by the standard originally adopted in 1972, by today we would have saved tens of thousands of lives and avoided hundreds of thousands of serious injuries. It is likely that many of us in this room knew at least one of these victims who could have been saved by passive restraints.

Passive restraints are not merely lifesavers; they also make good economic sense. As early as 1976, Secretary of Transportation Coleman said that automatic restraints could be provided to new car buyers "at a reasonable cost." [3] Recent developments in technology have permitted a reduction in the size and weight of air bag equipment by at least 50 percent. The latest cost estimates by an air bag supplier verify Secretary Coleman's prediction that if air bags are mass produced and installed in all vehicles the cost for an individual unit would be about $200.[4] With the average price of automobiles approaching $11,000, this additional initial cost can be readily justified. *It also reflects less than one day's hospital costs.* The reduction in frequency and severity of injuries will save countless days of hopitalization.

It has been reported in the press that the Ford Motor Company recently bid to sell 10,000 new cars equipped with air bags to the federal government.[5] This further confirms our conviction that installation of air bags is technically and economically feasible. Ford was the only manufacturer to bid. In the past, others have suggested that pilot installations would be productive in obtaining real world experience. The good faith of the other automobile manufacturers is questionable in the face of their failure to bid on the General Services Administration contract offer. Their non-response demonstrates the need for a federal passive restraint mandate and an enforced deadline.

In contrast, the economic cost of not providing passive restraints such as air bags is staggering. Virtually every economic analysis has concluded that the benefits of these restraints far outweigh their costs. Professor Nordhaus, for example, concluded that the net economic benefit to society of automobile restraints would be $2.4 billion per year.[6]

The National Highway Traffic Safety Administration estimated the economic cost of each death to be $268,727 and each serious injury at between $2,276 and $190,010.[7] Passive restraints will also result in direct savings to consumers in the form of reduced automobile insurance premiums. It is expected that for cars equipped with passive restraints, a 25–30 percent discount on the average medical portion of the New York no-fault premium will be appropriate. This will result in savings of approximately $330 for a vehicle's coverage life of 10 years. Assuming an anticipated reduction of only 15 percent per year on the average bodily injury liability premium in New York, based on reduced severity and frequency of injuries, it is estimated that there would be a further savings of an additional $330 over the same 10-year period, for a total of $660 in savings. Savings in other states would similarly reflect the reduction in injuries.

A majority of the insurers writing automobile insurance in New York State have recognized the potential cost savings which will result from the installation of passive restraints. Some insurers did this as early as 1973, when General Motors announced the availability of air bags on some of its automobiles. Insurers have filed

---

[2] Submission of Professor Nordhaus on behalf of the insurance companies to the National Highway Traffic Safety Administration; see Appendices to Petition for Writ of Certiorari to the Supreme Court of the United States, October Term, 1982, p. 122a.

[3] William T. Coleman, Jr., Secretary of Transportation, "Decision Concerning Occupant Crash Protection," Washington, D.C.: U.S. Department of Transportation, December 6, 1976, p. 6.

[4] Letter from David Lambert, President, Automotive Occupant Protection Association, to Honorable John Danforth, U.S. Senate, February 11, 1981. See also Status Report 16(8), Washington, D.C.: Insurance Institute for Highway Safety, June 10, 1981, p. 4, and memorandum from Robert H. Meyers, Jr., of Heron, Burchette, Ruckert & Rothwell to Hon. Roger Day, et al., dated August 23, 1983, p. 2.

[5] Wall Street Journal, August 25, 1983, p. 2. While this article notes that Transportation Department officials expect the air bags to cost about $500 apiece, we do not believe that this figure represents the cost of air bags mass produced and universally installed. Rather, it represents the cost of producing a necessity under boutique conditions.

[6] Comments of William Nordhaus on Notice of Proposed Rulemaking on Federal Motor Vehicle Safety Standards: Occupant Crash Protection, Docket 74-14, notice 22, Washington, D.C.: U.S. Department of Transportation, May 26, 1981.

[7] "The Economic Cost to Society of Motor Vehicle Accidents," Department of Transportation, National Highway Traffic Safety Administration, Publication No. DOT HS 806 342, January 1983, I-5.

with my Department for premium discounts of up to 30 percent on both no-fault and medical payment insurance for automobiles equipped with passive restraints. These filings reflect their considered actuarial judgment.

I am recommending that the National Association of Insurance Commissioners adopt model legislation which would require all automobile insurers to provide appropriate premium discounts for no-fault, medical payment and bodily injury liability coverages on insured vehicles equipped with passive restraint systems. The bodily injury reduction will reflect reduced frequency and severity of injuries and reduced death cases. I will mandate such reductions in New York to assure that the savings to insurers are reflected in the premium rates charged to the public.

The reduction in the number of deaths and the frequency and severity of personal injuries resulting from collisions will, in addition, necessarily lessen the burden upon private life, accident and disability insurance, workers' compensation systems, federal survivors and disability insurance, Supplemental Security Income, Aid to Families with Dependent Children and various state public assistance programs. These public costs have not been given adequate consideration by the National Highway Traffic Safety Administration.

In discussing passive restraints, I would like to emphasize the effectiveness of air bags over passive seat belts. Although passive belts are about as effective as the manual belt in today's automobiles, when used, as true passive restraints they are flawed. Passive belts must be designed to be detachable in an emergency. If they are also easily detachable during normal use, a substantial proportion of front-seat occupants are likely to leave them permanently detached. This makes their cost-effectiveness questionable, and certainly would increase the number of deaths and injuries, as compared to air bags. On the other hand, I fear that passive belts that are not easily detachable during normal use might result in a public outcry similar to the 1973–74 ignition interlock fiasco, set safety programs back for another 10 years and cost tens of thousands of lives. Overall, air bags will provide the greatest savings in lives and dollars and, I think, be most acceptable to the American public. I, therefore, support Title I of S. 1108, "Highway Safety Act of 1983", which would mandate the installation of air bags in all new vehicles manufactured on or after September 1, 1985.

The passive restraint, or air bag, issue is one of the most controversial and well-documented regulatory issues of all time. Recounting its history should bring great shame to the automobile manufacturers and, more recently, to the administrators within the National Highway Traffic Safety Administration. It is a classic exemple of an inherent flaw in the administrative rulemaking process in that, when the stakes are high enough and the adversaries well-financed, debate can be extended indefinitely. The American public has now been denied the potential benefits of effective passive restraints for nearly a decade. We are all familiar with the litany of delays and postponements that have occurred since 1972. Only the recent decision of the Supreme Court gives us some hope that there may be light at the end of the tunnel.

Given the Supreme Court's guidance, the course of action that the Department of Transportation ought in good faith to have taken is clear. They should have reinstated the passive restraint standard with the earliest possible effective date.

I would also like to briefly address the issue of bumper standards which is also encompassed by S. 1108. The debate over bumper standards has not been as dramatic, because only money and not people's lives are perceived to be at stake. However, the staff of the National Highway Traffic Safety Administration has been just as misguided in its handling of this matter. As soon as they announced the rollback of the bumper standard from 5 miles per hour to 2.5 miles per hour, they were challenged in the courts for taking an action unsupported by their own data, contrary to the intent of Congress, contrary to public policy and against the will of the public.

As experience with the 1983 model year develops, the evidence collected by the Highway Loss Data Institute continues to build against the National Highway Traffic Safety Administration action. There has been no apparent reduction in new car costs attributable to the 2.5 mile-per-hour bumper. The weight reductions, which translate into gasoline savings, have been well below National Highway Traffic Safety Administration projections, and the increased insurance collision costs attributable to the weakened bumpers are dramatic. For example, according to the Highway Loss Data Institute, the average loss payment per insured vehicle year for 1983 Honda Civics has increased 11 percent, while the Honda Accord's average collision loss cost has risen a staggering 40 percent.[8] The bumpers on these automobiles are

---

[8] Status Report 18(10), Washington, D.C.: Insurance Institute for Highway Safety, July 7, 1983, p. 1.

the weaker 2.5 mile-per-hour bumpers. The results for other 1983 models with the weaker 2.5 mile-per-hour bumpers are not yet available. What is significant is the speed with which the manufacturers were able to adopt the flimsy bumpers, as contrasted with their expressions of lengthy lead time required to install lifesaving devices.

The obvious effect of the weakened bumper standard is to increase the cost of repairing automobiles, thereby increasing the cost of automobile insurance. As insurance regulators concerned with the threatened affordability of automobile insurance, and as consumers who must pay more for both insurance and repairs, we must vigorously protest the National Highway Traffic Safety Administration's action in reducing bumper standards. We do not think that this subcommittee or Congress needs to wait for this issue to turn it course through the courts before acting.

The Department of Transportation recently suspended the 1983 implementation date of FMVSS 208.[9] Given the relief created by the Supreme Court, this action was probably nothing more than a clarification of the existing status of 208. However, the Administration in taking this action and the further delay until October 15 in even beginning a rulemaking, clearly demonstrates their intent to delay the institution of requirements for passive restraints. They are failing to pursue motor vehicle safety as intended by Congress. They are deliberately obstructing such progress. In view of this, we believe that the clear message needed is a passive restraint and 5 mile-per-hour bumper law which becomes effective with 1985 models. There was clear foreshadowing for the past decade of Congress intent, and the automobile industry, if forced to, can and will comply. Congress must take action now in order to save lives.

Senator DANFORTH. Thank you.

Mr. Beck.

Mr. BECK. Thank you, Senator Danforth.

As president of the National Association of Independent Insurers, I am appearing today because of our association's disappointment that another model year has gone by without an automatic crash protection rule, and because the Department of Transportation recently announced that implementation again has been delayed.

Although NAII and State Farm Insurance Co. won a major victory in the Supreme Court reversing recision of the rule, just as you have indicated earlier in these hearings, we believe that the jury is still out at DOT over whether and when thousands of lives will be saved and injuries reduced by speedy implementation.

Senator DANFORTH. Let me interject. I do not think the jury is still out.

Mr. BECK. All right. You are making a much stronger statement, and I think in view of some of the things I have heard here today, I would be inclined to agree with you.

We have long in the NAII supported installation of the automatic crash protection systems in all new cars. Just as NHTSA, as was pointed out here this morning when they mentioned that they had a variety of programs they were interested in, we, too, in our association have a variety of programs. We are very much engaged, for example, in trying to do something about teenage drinking and driving with films and speeches that many of us, including myself, are making around the country constantly.

But the passive restraints that have been discussed this morning and over the last several years are really the heart of the whole thing, because they are the lifesaving safety device. They are the best hope of all regardless of these other efforts.

---

[9]New York Times, September 1, 1983, p. B.13, "Air Bag Requirement Off For At Least A Year."

As I say, we are making the other efforts, but they are the best hope. And in view of the Supreme Court's recent decision, we have asked the new Transportation Secretary, just as State Farm has, to implement the rule as expeditiously as it possibly can. And I have offered those comments which are being filed today for your record, the comments to the Department's Secretary.

Ms. Steed said this morning when she was discounting some statements that were made earlier by her, she still said that apparently it is her view that the Supreme Court said to NHTSA take your time and do it right.

Well, I would agree that the Supreme Court said do it right, but I did not see anything in the Supreme Court decision that said take your time. So much time has been taken on this already. Again, I feel like I am repeating so much of what has been said here this morning, but this matter has been debated and redebated and restudied for something like 15 years. And we have submitted for the committee consideration a detailed account of all those things that have taken place in the last 15 years in our statement.

During this protracted process numerous hearings have been held, dozens of witnesses were heard from, volumes of comments filed. DOT heard from safety experts, health groups, insurers, economists, occupant protection safety manufacturers, and many others. All of these people over all these years spoke in very vivid terms about the societal cost, the clear need, the reliability, and the safety of such systems. Nothing has changed over these years to change the substantive support for this rule. If there was any justification to kill it, the Court certainly was not provided with it. That is very, very clear.

We wonder today, therefore, how much further consideration of this rule is needed, how much more possibly can be said, how many more times do the proponents such as ourselves have to come forward and present technical information, present all of these facts over and over again. How many times are we going to have to do this?

We, too, have great hope, as so many others, that Mrs. Dole—and we concur with your earlier statement about her—we have great hope that she might be able to do something, but we just do not see at this point that it is in the making.

We want to compliment certain individuals for doing what they are trying to do. The Mercedes Benz Co. is coming forward with a program in this country; the Ford Motor Co. is bidding on a contract to provide government with about 5,000 cars with airbags. The government has already contracted to retrofit 500 State police cars with driver airbags. But we are more concerned than ever because of the number of smaller cars on the road about the protection of the motoring public.

We want to compliment you on introducing S. 1108 and tell you emphatically that we support that bill along with all of these other matters. It does look like that bill might very well be required in order to have these very essential safety devices.

Thank you very much.

[The statement follows:]

STATEMENT OF LOWELL R. BECK, PRESIDENT, NATIONAL ASSOCIATION OF INDEPENDENT INSURERS

Senator Danforth, I am appearing here today before your highway safety oversight panel because of our association's disappointment that another model year has gone by without implementation of an automatic crash protection rule, and because the Department of Transportation recently announced that implementation again has been delayed. Although we won a major victory in the legal battle over this issue in the U.S. Supreme Court with the decision reversing rescission of the rule, the jury is still out at DOT over whether and when thousands of lives will be saved and hundreds of thousands of injuries will be reduced by speedy implementation of the rule. As a consequence of continuing delays in implementing this rule, the death and injury toll on our nation's highways continues to be shockingly and unnecessarily high because crash protection systems, which have been proven effective and which could cut this toll significantly, remain, for the most part, on the shelf, unused by the automakers.

I am Lowell Beck, President of the National Association of Independent Insurers. Accompany me today is Don Schaffer, Sr. Vice President, Secretary and General Counsel of Allstate Insurance Company, and also a member of NAII's Board of Governors and Executive Committee.

NAII is the nation's largest voluntary national trade association of property/casualty insurance companies with more than 500 company members which provide nearly one-half of the automobile insurance in the country. Our companies have been alarmed for years by the number of deaths and injuries occurring on our nation's highways, not only because of the impact on our companies financially, but more importantly because of the extent of human suffering involved which our members witness on a daily basis.

On behalf of NAII, I want to thank you, Chairman Danforth, for conducting these oversight hearings on the National Highway Traffic Safety Administration and for inviting our association to testify today. NAII has long supported installation of automatic crash protection systems in all new cars as the best hope for significantly reducing the staggering highway death and injury toll which has become a major public health problem. We continue to vigorously support all efforts to reach that goal. In view of the Supreme Court's recent ruling that the previous NHTSA Administrator acted unlawfully in his attempt to scrap the federal rule requiring this protection in new cars, we have asked the new Transportation Department Secretary to implement the rule as expeditiously as possible to assure that all Americans are afforded automatic crash protection. We also urge Congress to continue its oversight function to assure that DOT takes this important and long overdue step to protect the motoring public.

Statistics on the scope of the problem are chilling. Last year alone about 45,000 Americans lost their lives as a result of highway accidents. Hundreds of thousands more were seriously injured. Auto crashes are the leading cause of death for young people under age 34, the major source of paraplegia and quadriplegia, and a significant cause of epilepsy and other brain damage.

NHTSA has put a $57.2 billion price tag on the annual economic loss to society resulting from motor vehicle accidents. The costs to the federal government alone are estimated to be $7.5 billion in revenue and expenditures.

If the current fatality rate trends remain unchanged for the next several years, the death rate on our nation's highways could reach 60,000 per year by the next decade, according to NHTSA.

We applauded enactment of the National Traffic and Motor Vehicle Safety Act of 1966 which authorized the Transportation Department to issue motor vehicle safety standards to reduce traffic accidents and highway deaths and injuries. Since the vast majority of Americans (nearly 90 percent) do not use their manual seat belts each time they enter the car and public education campaign have largely failed to convince them to do so, safety experts, public health groups and insurers have long believed that automatic systems are a logical step to assure greater passenger protection. Thus, NAII participated in NHTSA rulemaking proceedings which led to the federal rule requiring all new cars to have such automatic crash protection systems.

The agency's rulemaking record amply documented the fact that automatic crash protection systems exist which are reliable, acceptable to the public and cost effective in reducing fatalities and serious injuries. After many delays, the rule to require such systems in new cars was scheduled to take effect in 1981.

We were extremely disappointed when the previous NHTSA Administrator attempted to rescind the automatic crash protection rule which had taken a decade to

develop. In our opinion, the Administrator had no basis for taking that action, and so we joined in a legal challenge to his order. Our action was vindicated recently when the U.S. Supreme Court issued its opinion agreeing that the action was unlawful. Now the matter has been referred back to the agency for reconsideration. While waiting for this decision, thousands of lives were snuffed out needlessly. Full implementation of the rule could save as many as ten thousand lives a year and prevent hundreds of thousands of serious injuries.

As the following summary of the history of the automatic crash protection rule makes clear, this matter has been studied, debated and re-studied for about 15 years:

In 1966, Congress passed legislation ordering the Transportation Department to develop standards for safer automobiles in order to reduce deaths and injuries from traffic accidents.

In 1967, DOT issued an occupant protection rule requiring manual seat belts in all cars.

In 1969, DOT proposed requiring automatic crash protection systems because seat belt use was extremely low with manual belts.

In 1970, DOT revised its occupant crash protection rule to require automatic crash protection systems in all new cars.

In 1971, DOT granted a two year delay in implementing the rule.

In 1972, the U.S. Court of Appeals found the rule was supported by substantial evidence.

In 1975, DOT extended the effective date of the rule for one year.

In 1976, DOT instituted a new rulemaking on the issue which resulted in the rule's suspension and a proposal for a 500,000 vehicle "demonstration program."

In 1977, a new DOT Secretary issued a new modified automatic crash protection rule which would phase-in compliance over the 1982–84 model years starting with large cars first.

Also in 1977, Congress considered the matter of a possible legislative veto and tacitly approved the rule by refusing to use this authority.

In 1979, the U.S. Court of Appeals upheld the modified rule as consistent with the agency's mandate, rational and not arbitrary.

In 1981, DOT ordered a one year delay in implementation of the rule and later that same year attempted to rescind the rule, purportedly because it would not produce significant safety benefits.

In 1982, the U.S. Court of Appeals reviewed the agency rescission order and found it arbitrary and capricious.

In 1983, the U.S. Supreme Court reviewed the Court of Appeals ruling and agreed that there was no basis for rescinding the rule.

During this long and protracted process, numerous hearings were held, hundreds of witnesses were heard from and volumes of comments were filed on the issues. DOT heard from safety experts, health groups, insurers, economists, occupant protection systems manufacturers, and others about the societal costs of highway accidents, the clear need for automatic crash protection systems, the reliability and safety of such systems, and their cost-effectiveness. This testimony and information has been repeatedly furnished to the agency, to Congress and the courts.

Nothing has happened over these years to change the evidentiary support for this rule and that, in essence, was what the Supreme Court found also.

If there was any justification not to go forward with this rule, the Court was certainly not provided with it. In our view, the proponents of the rule have established beyond a questionable doubt that automatic occupant crash protection is needed, the systems have been proven safe, reliable and cost-effective, and now it is time they were installed in all cars for the safety of the motoring public.

We wonder today, therefore, how much further consideration of this rule is needed? How much more possibly can be said? How many more times do the proponents of automatic crash protection systems have to come forward and prove their case? How many more lives will be lost needlessly while waiting for yet more and more consideration of this rule?

As you know, DOT recently announced yet another year's delay in implementing the rule. We are filing a letter with DOT today expressing our disappointment with the agency's decision to suspend the rule for another year.

This effectively means that the rule can't be implemented for probably one or two more model years, given the leadtime requirements the carmakers have argued for in the past. The delay, we would note, is not entirely to allow the carmakers to gear up to comply with the rule, as the public may have been led to believe. It is instead intended to permit the agency time to reconsider whether there will even be a rule in the future and if so, what form it will take. We recognize that as a practical

matter, the carmakers need time to prepare for installing these systems into their cars. We also recognize that the Supreme Court contemplated that the agency would take some time to reconsider its action. However DOT has not justified the cumbersome procedures outlined in the suspension notice and the delay which will be involved before a new effective date is set. In our view these procedures and this delay are unwarranted. DOT's action stands out as a reminder of the many other delays which have occured in the history of this protracted proceeding. Sadly, it means more lives will be lost on our nation's highways needlessly.

Witnesses for NAII have appeared before this subcommittee twice this year at your hearings on motor vehicle safety and the marketplace to discuss fully concerns we had with the direction NHTSA was taking under the previous Administrator, so I will not take time to repeat those comments here.

Let me just say that NAII has great hope that, with the appointment of Elizabeth Dole, a staunch safety advocate, as head of the Transportation Department, the agency will do much, much more in the future to require and promote automatic crash protection systems.

We are encouraged by Mrs. Dole's public statements about her high priority interest in promoting highway safety. We are pleased by some new marketplace developments such as the Mercedes-Benz decision to market some new air bag equipped cars in this country next year. We also are pleased that Ford Motor Co. is bidding on a NHTSA-GSA contract to provide the government with about 5,000 cars with driver side air bags and that the government has already contracted with another firm to retrofit 500 state police cars with driver side air bags. But we are more concerned than ever, because of the increasing number of smaller cars on the road, about the protection of the rest ot the American motoring public, and we will continue to urge Mrs. Dole to do her utmost to assure that all of the nation's citizens are provided such occupant protection systems.

As the witnesses appearing here today demonstrate, public health groups, consumer groups, victims groups, the insurance industry and others are all united in supporting implementation of the automatic crash protection requirement as soon as possible to realize this goal of providing all Americans with automatic crash protection to reduce deaths and injuries on our highways.

The case for automatic crash protection has been fully documented and the Supreme Court recently ruled that there were insufficient reasons for abandoning the requirement. It is now up to the Department of Transportation to begin implementing the rule to fulfill its mandate to save lives and reduce injuries. Further delays for studies, demonstrations and so on, in our opinion, are totally unwarranted and will only result in many more needless deaths and injuries, and will be inconsistent with the mandate of the Supreme Court.

In conclusion, NAII supports introduction of automatic crash protection systems as soon as possible in all new cars. We continue to believe that the air bag or air cushion restraint system is the best available protective system, and that's why we support Senator Danforth's comprehensive highway safety package, S. 1108, which would require such systems by model year 1986. However, as I have said, we also have urged Secretary Dole to implement the current federal requirement that either air bags or automatic seat belts be installed in new cars as soon as possible. We hope that a new day has arrived at DOT, but we know that with S. 1108 we can be assured of it.

Finally, Chairman Danforth, I want to commend you for your leadership in focusing the spotlight of public attention on NHTSA and on automatic crash protection systems which have the potential for substantially reducing the staggering death and injury toll on our nation's highways. We hope you and others in Congress will continue to conduct oversight hearings when appropriate on this issue which is of vital concern to every American.

Senator DANFORTH. Thank you, Mr. Beck.

Mr. Schaffer.

Mr. SCHAFFER. Mr. Chairman, as one of the counsels of record in the Supreme Court case, I am not at all sure that I recognize the decision that was being discussed by Mr. DeMuth or Ms. Steed. Perhaps they got the wrong volume of the Supreme Court Reporter. But in any event, I saw nothing about taking your time or delay, as Mr. Beck has said.

Allstate insures 11 million private passenger automobiles and pays out $1½ billion annually for losses resulting from automobile-

induced injuries, so we have an economic interest in preventing deaths and injuries in an effort to keep the cost of automobile insurance affordable to the American motoring public, besides the humane interest in saving lives and avoiding crippling injuries.

For several years the technology of automatic crash protection, airbags or automatic belts, has been available to reduce this carnage, but their use has been resisted strenuously by American vehicle manufacturers—what the Supreme Court called a decade of the equivalent of regulatory war.

Allstate has for longer than a decade operated the largest private airbag fleet, over 600 cars traveling over 30 million miles. Our interest has not been just theoretical. Our employees have driven these cars all over the country under all geographic and climatic conditions and had no inadvertent inflations, no failures to inflate in a crash situation. I myself have been driving airbag cars for 12 years and have been involved in an airbag crash. When I hear people talk about this being experimental and we need more testing, it is beyond belief that you could be driving those cars for 12 years and still get that kind of response. In fact, I drove an old 1976 Olds, and still have three of them with airbags, to the airport when I flew here yesterday.

Now, we have also been involved in live crash testing on an extensive basis. After 12 years of experience we hardly consider the airbag as experimental, and we are impatient with those who counsel more study or delay.

Voluntary solutions would be desirable, but our airbag cars are worn out, and no replacements are available. There is no consumer choice unless you would say that Mercedes may be one. But for the average American that is not a realistic choice.

In an evidentiary environment even automobile manufacturers admit that safety equipment should be required by regulation for an equal competitive impact and to prevent penalizing the safety pioneer. Before yourself and this committee, Ford has said:

> Certainly in the case of some important societal goals, a regulatory approach was necessary, because there is no direct market force that can accomplish these goals. And competitive pressures make unilateral action by any one manufacturer impractical. For that reason, Ford supported adoption of reasonable emission control and vehicle safety rules.

General Motors said at the same time:

> We are not against all regulation. We believe that regulation is often the best way, and in fact for matters of the environment and so on, it is probably the only way for protecting public health and safety.

And Ed Cole, after retiring as president of General Motors, said:

> One more point, in a competitive business like the automotive, the only way uniform performance of emission control or safety equipment will be incorporated is through regulation.

Yet, the administration canceled the automatic crash protection rule based upon General Motors' statements that it was canceling its airbag program and would use detachable automatic belts, which General Motors itself alleged would be ineffective and not save lives, thus making the regulation itself ineffective.

And the administration and General Motors defended that rescission through the Supreme Court. The circuit court called this Or-

wellian reasoning. The Supreme Court said a safety standard cannot be revoked "simply because the industry has opted for an ineffective seatbelt design."

Incidentally, the latest crash data from the Highway Loss Data Institute shows that 13 of the 15 most injury-producing cars are still Japanese, and the failure to adopt the passive restraint standard lets the Japanese keep pumping in cars that produce more deaths and injuries per vehicle than any American automobile. So we think it is definitely to the benefit of the American manufacturers to proceed with safety rules because they can definitely beat the Japanese.

Now, you would think that after more than a decade of rulemaking, three circuit court of appeals decisions, the failure of the congressional veto process and now a Supreme Court reversal that General Motors which urged the Government recission, would be ready to concentrate on occupant crash protection and start installing airbags in an effort to recover some of their $160 million investment. But instead, General Motors chairman, who served as general in the decade of war referred to by the Supreme Court, has written Secretary Dole requesting study by independent consultants and more delay.

However, that statement by General Motors negates his own request by saying that the present airbag systems on the road are so technologically obsolete that no safety engineer would consider them acceptable. Thus, even though present airbags in use have convinced every Secretary of Transportation that they were effective and cost beneficial and have performed exceptionally well, there are on the shelf new advanced systems technologically far superior, so the new generation of airbags must be several times more effective and cost beneficial by General Motors' own statement. Thus, no further study or review is necessary, by GM's own admission.

In fact, as long ago as 1977, Ed Cole, to whom I previously referred, after retiring as president of General Motors, said:

> The passive restraint system is different than emissions. The technology is available," and the need is there. I think the only way passive restraints are going to get to first base is making them mandatory, and other tests will prove nothing. Yet, the passive air cushion evolved like all other systems: By mandating the basic performance requirement and not telling the industry how it should be done would get the job done.

In 1978 the bipartisan Office of Technology Assessment of the U.S. Congress concluded, "technically, the system is extremely reliable," and they made other favorable conclusions. Certainly 5 years later we need no more delays or studies designed to produce delay.

In addition, Mercedes, having sold airbags in Europe for 3 years, does not share Mr. Smith's doubts about effectiveness, saying, in total, over 25 million deutschmarks have been invested by Mercedes in this additional safety innovation. It has now been thoroughly tested and proven—over 50 million kilometers with no malfunctions.

Certainly General Motors should not be the adviser on this subject. They are an avowed opponent of automatic crash protection. They have canceled their airbag program. They submitted the strategy upon which rescission of the standard was based, and they

included rescission of passive-restraint requirements on their first wish list when this administration took office. Their suggestions should be ignored, and we must make certain that Secretary Dole is not influenced by General Motors or others and fails to act affirmatively and expeditiously. The facts are clear and simple.

Senator DANFORTH. I think she is not influenced by them so much as she is influenced by OMB and the White House.

[The statement follows:]

STATEMENT OF DONALD L. SCHAFFER, SENIOR VICE PRESIDENT, SECRETARY AND GENERAL COUNSEL OF ALLSTATE INSURANCE CO.

Mr. Chairman, Members of the Committee, I am Donald L. Schaffer, Senior Vice President, Secretary and General Counsel of Allstate Insurance Company. We appreciate your invitation to testify about the role Allstate has played in advancing the cause of automobile safety.

Allstate insures more than 11,000,000 private passenger automobiles in the United States, and last year incurred more than $1.5 billion in losses as a result of bodily injuries to persons arising out of the operation, maintenance and use of private passenger automobiles. Our humane interest in the preservation of life and health is thus buttressed by a significant economic interest in reducing the carnage on our Nation's roads and highways as a means of assuring that the cost of automobile insurance remains within the reach of the average American consumer. Allstate thus applauds your dedication to assuring that the purposes of the National Traffic and Motor Vehicle Safety Act of 1966 are indeed met. We commend you for your conduct of these proceedings, as well as your sponsorship of S. 1108, the Highway Safety Act of 1983.

Mr. Chairman, on June 24 of this year, Justice Byron White, speaking for a unanimous United States Supreme Court, stated:

"For nearly a decade the automobile industry has waged the regulatory equivalent of war against the air bag . . . and lost . . . ".

The Court found that the Department of Transportation violated the law when it rescinded the Passive Restraint Standard. Mr. Chairman, it is time for the law to be obeyed; it is time for the war to end.

Like all wars, the war against the air bags has been extraordinarily costly. The lives of more than 100,000 Americans have been or will be claimed as a consequence of this war. More than 1,000,000 Americans have lost or will lose their good health to it. The economic costs are staggering. Like all wars, this war has resulted in broken lives, broken bodies, broken families and broken dreams, but, unlike most wars which we have fought for the benefit of our children, this war has been fought at their expense. Car crashes are the leading cause of death and injury of our nation's youth.

This has not been an ordinary war fought with guns and bullets on the ravaged landscapes of battlefields. Rather, it has been fought with statements and briefs in the ornate confines of hearing rooms, in offices and chambers of the Executive and Legislative Branches of our Government, and now in the highest Court of the land. The civility of the environment of this war belies the hostility of its consequences.

The alliances produced by this war speak volumes concerning its nature.

On one side stands the automobile manufacturing community, perhaps this nation's most economically important industry. They've been joined by others; associations, groups and individuals, including public servants, who seem consistently to bring to this battle, first, a dedication to old technology which has consistently been rejected by 9 out of 10 Americans, and, second, a certain ideological bent concerning the limited role the Federal Government should play in discharging its Constitutional responsibility to promote the general welfare.

On the opposite side stand other representatives of the American business community, including essentially the entire automobile insurance industry, as well as manufacturers and suppliers of air bag systems and system components who recognize that auto crashes create our largest public health problem. Joining ranks with them are groups representing the laborers who build the cars, consumers who operate them, medical groups whose members mend the bodies broken in car crashes, including members of the American Academy of Pediatrics, who know that car crashes kill and cripple more children in this country each year than polio ever did. Mothers Against Drunk Driving have also joined, knowing that improved protection systems can reduce the enormous destruction caused by drunk drivers. Groups rep-

resenting those seriously injured in car crashes are also represented. Car crashes are the leading cause of paraplegia, quadriplegia, as well as epilepsy in adult Americans in this country. Private citizens, including those whose lives have been saved by air bags, as well as public servants and associations of public servants such as the National Association of Insurance Commissioners and the International Association of Chiefs of Police, are also allied. This alliance brings to the dispute a belief that the Government has a Constitutional, as well as a specific statutory, obligation to use available, cost-beneficial technology to save lives and prevent injuries and thus cure a large part of the public health problem of automobile death and injury. (The National Coalition to reduce Car Crash Injuries has been established to coordinate the efforts of many of these groups.)

The war has had a long and convoluted history. Allstate has borne witness to it, having been involved nearly from the beginning. Indeed, as early as the late 1960's, evidence of the life-saving and injury-reducing superiority of air bags over active belt systems was so overwhelming that we at Allstate made the decision to strive to assure that these extraordinary protection devices would be included in all new cars. We were not alone. Many others agreed, including, most importantly, those in Government charged with administering the law who commenced rule making in the rightful discharge of their statutory responsibilities under the 1966 Safety Act. Their job was to reduce injuries and deaths which result from automobile accidents, and a rule requiring air bag technology in all new cars represented the optimum way for them to obey the law and thus satisfy the underlying purposes of the Act.

From the beginning, we supported the proposed regulation because its life-saving and injury-preventing benefits were overwhelming, and because under our reading of the statute, the Department of Transportation was required to act to save lives and prevent injuries. It was our legal opinion then, recently vindicated by the United States Supreme Court, that the Government simply did not possess the option to ignore passive restraint technology. Affirmative government action, in the form of the safety standard setting process, was thus required.

We also supported the regulation because we believed it would help the American car manufacturing community. Air bag technology was born in America and domestic manufacturers were clearly ahead of the foreign competition. Moreover, American cars were structurally superior to most foreign models and thus again our domestic manufacturers would have a "head start" against the competition.

In addition, under regulation, all competitors are subjected to the same standards. Results are guaranteed within the confines of equal treatment and the possibility of penalizing the safety pioneer is thus eliminated.

Indeed, ironically, even as they fought the war against safety regulation, the manufacturers publicly conceded the need for it. Ford Motor Company publicly testified:

"Certainly in the case of some important societal goals a regulatory approach was necessary, because there was no direct market force that would accomplish these goals yet competitive pressures make unilateral action by any one manufacturer impractical. For that reason Ford supported adoption of reasonable emission control and vehicle safety rules."

At the same hearing General Motors conceded that regulation is probably the *only way* to achieve safety goals when it made the following statement:

"General Motors is not against all regulation, and we believe that regulation is often the best way, and in fact, for matters of the environment and so on, it is probably the *only way,* for protecting public health and safety." (Emphasis added)

Perhaps the former President of General Motors, said it best in a letter in January of 1977, to the President of the Insurance Institute for Highway Safety, when he concluded:

". . . In a competitive business like the automotive, the *only way* uniform performance of emission control or safety equipment will be incorporated is through regulation." (Emphasis added)

As businessmen, however, and ardent advocates of our free enterprise system, we believed that the marketplace should be given the opportunity to provide these phemomenal safety systems to American car buyers. We actively sought marketplace solutions touting air bag technology publicly and urging manufacturers to expedite the process of guaranteeing this superior protection to car buyers outside of the rulemaking process. In those early days, the response of the manufacturing community was both encouraging and discouraging. On the one hand, regulatory war against air bags had clearly been declared. Opposition to the Standard was intense and litigation was pursued in an effort to have the Standard abandoned. On the other hand, due likely to regulatory pressures, some manufacturers appeared to be engaged in a good faith effort to advance the technology. General Motors appeared

to be committed to make it available to the public at an early date, and Ford engaged in active endeavors.

However, pressure to destroy the regulation was unrelenting. The first attempt to have the Courts overturn the Standard failed (*Chrysler Corp.* v. *Department of Transportation,* 472 F2d 659), (CA 6 1972). The Sixth Circuit Court of Appeals upheld the Standard and its technology-forcing nature, but granted the manufacturers a delay by ruling for them on an ancillary issue relating to the efficacy of the then currently used test dummy.

The Standard was still very much alive, but the war was still very much on. The original 1973 effective date of the Standard had in the interim been moved back to 1976 because of Nixon administration fears concerning its economic impact on the auto industry. Thus, another battle in the war had been won by those opposed to the regulation.

That delay was indeed a disappointment, but we nonetheless remained optimistic that air bags would be available to the public, on a large scale basis, and at an early date. This, because in 1970, General Motors pledged in a submission to the Department of Transportation, and in a letter to 82 members of Congress, that it would provide air bags, first as options, and then as standard equipment on all of its cars by the 1975 model year. At the time the Sixth Circuit Court of Appeals' decision was rendered, we had no reason to believe that the promise made by General Motors would not be kept.

Allstate's support of the superior life-saving and injury-preventing capabilities of air bags embodied more than mere advocacy. In 1972, we took delivery of 200 Mercurys which were factory-equipped with driver-side air bag systems. Our cars were part of a test fleet of 831 air bag-equipped Mercurys produced by Ford. In 1973, we took delivery from General Motors of 36 Chevrolets equipped with full front seat air bag systems. We were committed to air bag technology. Our investment in it was designed to help provide real world, on-the-road experience, and more importantly, to provide superior life-saving systems to the operators of our fleet vehicles.

In early 1973, General Motors revealed that the production plant experience in building 1,000 air bag-equipped Chevrolets contributed greatly to the planning facilities and methods for higher volumes of air cushioned system production. We still believed that their promise would be kept. Yet, late that same year, General Motors announced it was cutting its planned production of air bag-equipped cars during the 1974–75 model years from more than one million to no more than 150,000 units. The promise to deliver a full fleet of air bag-equipped cars by the 1975 model year would not be fulfilled. The prospect of large scale air bag availability, in the absence of regulation requiring it, would not be achieved.

Still, General Motors was committed to producing up to 150,000 air bag-equipped cars and, in October of 1973, Allstate announced a 30 percent discount on medical and no fault personal injury coverages for all cars equipped with air bags. We wanted to encourage the purchase of air bag-equipped cars and we knew that insured losses would be substantially lower for those that did. Our lead was followed by many in the insurance business.

Throughout this period, the war against air bags and the Safety Standard requiring them had been intensified. The major tactic pursued by opponents of the Safety Standard was the propagation of myths concerning air bag cost, safety and reliability. With respect to safety and reliability, the myths, designed to raise public fears, ranges from allegations that air bags, when activated, would blow the glass out of cars and destroy the occupants' hearing, to statements that air bags in parked cars could be deployed by pranksters hitting the bumpers with baseball bats. The most significant technical myth, and the one which opponents propagated most intensely, revolved around the prospect of inadvertent actuation. Indeed, opponents of air bags sought specifically to mislead the public into believing that accidental deployment would be common, and would cause the driver to lose control of the car. The ploy of this propaganda was clear; to dupe the public into believing that air bags would harm rather than help safety efforts.

However, by the time these myths were being advanced in the 1970's, air bag technology was developed to the point that the system had been proven safe and reliable. Accordingly, Allstate and others undertook public education campaigns to prove that the myths were just that, and to advance public acceptance of air bag restraint systems. We also engaged in elaborate testing of the air bag system comparing the benefits of air bags to active belt systems. To our knowledge, Allstate is the only organization, either individually or in cooperation with other groups, to use live volunteers in six different test impacts of production air bag-equipped automobiles. We also conducted other crash tests using dummies to compare belt and air

bag performances. In every instance, the safety, reliability and superiority of air bags was proven.

From these tests, and consistent with our public education endeavors, we produced air bag television commercials. In my testimony before this Committee in 1973, I noted that due to the anti-air bag efforts of others, it was only after a good deal of bureaucratic turmoil covering several months that we received clearance for network airing of those commercials.

General Motors, in anticipation of marketing air bag-equipped cars, produced a film which destroyed the technical myths which had been generated against the air bag. A copy of the film is in the record, but was not, to our knowledge, ever made available to the public even when General Motors had air bag cars on the market.

Thus the myths persisted. In fact it was not until December of 1979 when General Motors publicly announced that no technological problems existed with the air bag that the technical myths seemed to begin to disappear.

Yet these myths are still advanced today, perhaps by those who have not monitored the issue closely, perhaps merely as a remnant of the past. The technological aspects of the issue were summarized as long ago as 1978 by the Office of Technology Assessment of the U.S. Congress, when it concluded:

"Technically, the system is extremely reliable. Opertionally, it provides good protection in front-end collisions, which account for more than 50 percent of vehicle occupant fatalities. The probability of inadvertent inflation of the ACRS is virtually nil; experiments have demonstrated that if it does occur, no real problems, such as loss of control of the vehicle, are likely to occur."

The overriding myth, however, which we confronted was the same myth we still confront, and that is that air bags could increase the cost of a new car by as much as $1,000. Detailed studies proving the falsehood of that myth are replete on the official record. The fact is that as early as 1974, the evidence was convincing that if air bags were included in all new cars, the cost to the consumer would average about $100, which sum included a handsome profit for both manufacturer and dealer. Costs have increased since that time, but air bag suppliers still testify to the fact that universal air bag availability could be achieved at a cost of less than $200 per car; less than the cost of a vinyl roof. Costs, of course, are a function of volume and the public responds to price differentials. It is, therefore, inevitable that air bags produced in high volume will not only be low in cost but high in acceptability to the American public. Aggressive marketing by the manufacturers can help ensure that result.

The myths propagated against air bags clearly had an adverse impact, but the fact which always amazed us during the course of this war was the high level of public support of air bags in the face of these myths. Indeed, public support of air bags must also have surprised air bag opponents, since the record clearly reveals that, at least in several instances of which we are aware, manufacturers were more than just a little reluctant to share on the public record, information concerning the strong public sentiment in favor of air bags.

In fact, marketing surveys so strongly supported air bags that it is likely that if such support pertained to an ordinary option, such would be included as standard equipment and it would cost the buyer money to have it removed; but safety equipment was to be treated differently.

In 1974, Ed Cole, a strong advocate of air bag technology, retired as President of General Motors. Managements change and so do management philosophies. Ultimately, General Motors, instead of producing air bags in all cars as originally promised, or even in a large number of cars as subsequently pledged, produced only 10,000 air bag-equipped cars. Air bags were available only on higher cost luxury models. Nonetheless, we purchased 200 1974 model year air bag-equipped cars and purchased another 200 in 1976.

These cars are worn out now and cannot be replaced. Yet the experience we had with 5 different model year air bag cars, including 50 1975 air bag Volvos, is compelling proof of the safety and reliability of air bags.

In total, for almost a decade, Allstate people operated more than 600 air bag automobiles all over this country under all kinds of climatic and road conditions. Our fleet cars traveled more than 30 million miles.

There were a lot of fender benders, parking lot bumps, panic stops and other usual occurrences, as well as a few high-speed crashes. We have never experienced an inadvertent inflation in any of the cars in our air bag fleet and there has never been a failure to inflate in the high speed situations where the air bags were supposed to inflate. I am one of the Allstaters who has directly benefited from the air bag, having been involved in a serious accident while driving a 1974 Olds Toronado equipped with General Motors' superb system. I experienced no injuries.

One of our fleet cars even starred in a movie. We had the unique opportunity to assist in the production of a film which featured a crash into a solid wall at 32.6 mph. The crash car was a production Olds from our fleet and had 45,000 miles of conventional service at the time of the crash. The stunt driver emerged unhurt from a crash which might otherwise have been fatal.

The difference between having cars on the market and marketing cars was perhaps best demonstrated by General Motors with respect to the 10,000 air bag cars it ultimately produced. That experience provides powerful probative evidence of the need for regulation. Not only did General Motors make no effort to destroy the anti-air bag myths, it engaged in no effective marketing effort to sell its own air bag cars. General Motors management ultimately conceded this fact in the face of evidence that perhaps General Motors and/or its dealers tried specifically to frustrate the sale of these cars.

At the same time General Motors was quietly introducing air bag technology, its competition we have since learned, led by the then current management of Ford, was urging those in power to reject the best new technology, air bags, and pursue a gimmick approach aimed allegedly at increasing use of the old technology, active belt systems. These efforts prevailed as Nixon administration chose the intrusive and irritating ignition interlock device that was designed to force the use of a restraint system 9 in 10 Americans were compelled to buy but routinely rejected. Predictably, as we believe air bag opponents anticipated, the American public rejected the interlock device and when Congress was in the process of overturning that rule, air bag opponents very cleverly sought to use the sentiment against the federal regulation requiring ignition interlocks as a means of precluding federal regulation which would require compliance with air bags. (It is perhaps ironic that present Ford management is now a major proponent of crash safety and automatic crash protection, while General Motors' present management violently opposes automatic crash protection.)

As we look back over the course of the regulatory war to date, air bag opponents' greatest opportunity for victory probably existed at the time of the public outcry against the ignition interlock. If they were ever to cripple the Safety Standard, they would have had to have been successful in Congress in 1974. However, Congress rejected their overtures merely stipulating that both Houses of Congress could veto a future safety standard which in essence would require compliance with air bags. The long-term hopes of air bag opponents should have been dashed, but the war nonetheless raged on.

The biggest problem faced by air bag opponents was the fact that the case for air bags was so strong that they could find no one charged with administering the Safety Act to agree with them. Republican and Democrat alike supported air bags and the Safety Standard, once the facts had been aired.

Indeed, while air bag and safety standard opponents frequently praised the so-called Coleman Decision, such was in fact a direct result of the strength of the case in favor of air bags. Secretary Coleman ruled in 1976 that notwithstanding the superior life-saving and injury-reducing capabilities of air bags, and their complete reliability and cost effectiveness, implementation of the Standard would be delayed pending a 300,000 vehicle air bag test fleet designed to assure ultimate public acceptance. Manufacturers agreed with this Coleman proposal simply because the alternative, as clearly stated by the Secretary, was mandatory installation of passive restraints. Under the Coleman agreement, manufacturers agreed to sell the air bag system for $100 and to take specific measures to assure that the cars were marketed effectively. However, the manufacturers required a provision stating that should a mandatory Passive Restraint Safety Standard be adopted, they would have the option of rescinding the contracts.

In March of 1977, then Secretary of Transportation Adams put aside the Coleman decision noting that the contracts entered into between the manufacturers and Secretary Coleman represented a 5 to 8 year delay in the installation of passive restraints in *all* passenger cars. In July of that year, Secretary Adams issued his decision requiring passive restraints, either air bags or newly-developed automatic seat belt systems, in all new cars by September of 1983. Secretary Adams urged the manufacturers to comply with the terms of the Coleman agreement, but the manufacturers refused, rescinding their agreement with the Government to produce air bag cars.

Having lost that stage of the regulatory war, air bag opponents moved their campaign to Congress in an effort to have the regulation vetoed. However, again they failed.

The House Interstate and Foreign Commerce Committee voted to table the veto resolution and the United States Senate, by the impressive vote of 65 to 31, voted to

table the veto resolution, thus supporting Secretary Adam's decision requiring passive restraints.

The air bag and indeed all viable forms of passive restraint technology, including the more recently developed passive belt technology, had thus passed both regulatory and legislative muster. Air bag opponents, having lost two major battles in the war against air bags, sought resort to the courts. Again defeat befell them in *Pacific Legal Foundation* v. *Department of Transportation,* [593 F.2d 1338 (CADC), cert. denied, 444 US (1979)].

Subsequent to the decision of the United States Court of Appeals for the District of Columbia, it appeared to many that the war was over. The Standard had been promulgated on the basis of an immense record. It had been supported by Congress which refused to veto it, and it had been upheld by the courts. Opposition to it had been intense during this stage of the war, perhaps the most intense in its history. However, the Standard provided for an extraordinarily long-term, and phased-in, implementation schedule which had been urged upon the Secretary by the manufacturers. At that stage, the manufacturers had lost the regulatory, legislative and judicial battles, but nonetheless had extracted substantial concessions from the Secretary in order to allow them to implement this life-saving and injury-preventing technology at an exceptionally slow pace. However, the concessions they extracted in fact provided the opportunity to fight the war once more, rather than move ahead to comply with the letter and spirit of the law.

Just as managements change, so do political administrations, and when the current administration took office, the manufacturers and others rearmed, moving quickly and strategically to capitalize on the ideological bent of the administration opposed to federal regulations. This administration clearly failed to distinguish between economic regulation on the one hand and public health and safety regulation on the other. Tactically, the manufacturers highlighted the fact that they were experiencing severe economic difficulties and that fleet relief from regulation, specifically the Passive Restraint Standard, would aid them in their plight. They found a sympathetic ear. For the first time an individual charged under the law with the responsibility to save lives and reduce injuries appeared to be willing to find and implement ways to frustrate the goal, and to set back a decade of occupant safety efforts.

Convoluted, yet transparent, tactics were designed which would allow the new NHTSA Administrator to rationalize a rescission of the Standard, an objective supported not just by him, but apparently by the Administration generally.

First, a one-year delay in the effective date of the Standard was issued over the strong objection of air bag and passive restraint supporters and contrary to the evidence of record. Ultimately, the entire Standard was abandoned. The easily detachable passive belt strategy advanced principally by General Motors and subsequently endorsed uncritically by the Administrator was, in our view, a sham, and was in fact found to be just that in the strongly-worded opinion of the United States Court of Appeals for the District of Columbia, overturning the rescission order. The Administration and the Motor Vehicle Manufacturers Association pursued Supreme Court review.

We were not surprised by the unanimous Supreme Court opinion upholding the major finding of the Appellate Court's decision. The Supreme Court clearly limited the alternatives available to the Department of Transportation. If the purposes of the Act can be advanced through the use of good, life-saving technology, the benefits of the Standard must be evaluated in the light of that technology. Thus opponents of the Standard can no longer ignore or deny the existence of proven technology—air bags and good, use-inducing passive belts which in fact meet the purposes of the Act.

The case for air bags and for use-inducing passive belts is overwhelming. If the opponents could have overcome that case with credible evidence, they would have done so in the original proceedings. They tried to find a way to get around air bags and good passive belt systems, but even with the regulator clearly on their side they were unable to construct a case which could pass muster with the courts.

We believe our opponents cannot win the war against the air bag and good passive belt systems. Delay is probably all they can seek and expect.

Indeed, the delay, linger and wait tactics have already begun. General Motors, in a recent letter to the Secretary of Transportation, urged additional delay so that a completely new analysis of both technical and economic issues could be undertaken by private consultants. They offer no good reason for the delay other than the passage of time since the last formal inquiry. They conceded that the technology had been developing, apparently reinforcing their earlier conclusion that there are no technical problems presented by air bags. They also pointed to the $900 cost of air

bags in Mercedes Benz, as if such meant something in a regulatory setting. Is the cost of a Mercedes probative of the cost of a Chevrolet? General Motors offered absolutely no good reason for delay because there is none.

Subsequent to receipt of the General Motors letter, the Department of Transportation announced that the Standard would be held in abeyance for one year and that the ultimate decision with respect to it would be made within that period. It is imperative to emphasize two facts. First, it was six years ago that the manufacturers were told that by this month they would have to install passive restraints in all new cars. Second, many manufacturers terminated or otherwise junked air bag programs even before the courts had an opportunity to review the legality of the rescission order, in absolute contravention of the spirit of our Administrative law process. Thus, appeals for further delay to begin "new" air bag programs are not legitimate and must be rejected. If early compliance with the Passive Restraint Standard is extremely costly or difficult for some manufacturers, such is the price they must pay for their cavalier and disrespectful attitude toward the Judiciary.

In our view, the Secretary's decision is simple and can be made soon. It will require no new evidence of record, no new review, no more delay, no more lingering, no more waiting, no more unnecessary death and injury.

The facts are clear and simple. Air bags and use-inducing passive belts will save lives and prevent injuries, thus furthering the purposes of the 1966 Safety Act, and the record demonstrates beyond doubt that such are cost-beneficial. Thus, if the Secretary is to consider the matter further, such should relate only to implementation schedules.

Implementation must be expedited. In this war, delay equals death. Every single time we let the beginning of a new model year pass by without requiring passive restraints, we condemn 1,000 people to needless death and another 20,000 to needless serious injury. Too many people have already died. Too many people have lost their good health in this often nonsensical regulatory war. We are hopeful that Secretary Dole understands the simple problem before her, and will implement the simple, yet proper, solution; implementation of the Standard, at the earliest possible date, but no later than September 1, 1984.

Secretary Dole can do nothing about the tens of thousands of people who have died or will die unnecessarily as a result of more than a decade of war against the air bag. She cannot restore to good health the millions who have been or will be needlessly torn by it. She cannot return to parents, the children killed by this war, nor return to the children the vibrant lives they might have had. Nor can she repair the destruction or return the billions of dollars of economic waste.

However, Secretary Dole can and must bring this war to an end. She can and she must reject any effort, from whatever source, to prolong it. She can and must act honorably in the discharge of her own statutory responsibilities. Mr. Chairman, we believe the Secretary will do what is necessary to implement the Standard at the earliest possible date beginning with at least some 1985 model year cars. If she does as we believe she must and does it soon, no Congressional action will be necessary. However, continued oversight is essential so that Congress can end the war if the Secretary refuses to do so.

Thank you for the opportunity to present this testimony. I would be pleased to answer whatever questions you, or other Members of the Committee, may have.

Senator DANFORTH. Let me ask you to address yourself to what I think is really the justification, I guess, used for the administration's cost-benefit analysis, and ask you to talk not so much about life savings or accident injury savings, pain, suffering, disfigurement, but instead talk about money.

Mr. Corcoran, you did that. I would like you to just reiterate what you said and then ask you gentlemen to discuss it. It is my understanding of what you said that if we had a passive restraint rule in effect the owner of a car could substantially reduce the amount of insurance premiums paid over the life of the car.

Mr. CORCORAN. That is, with no legislative or regulatory action on my part to date, companies have already filed in my department premium discounts of up to 30 percent on both the no-fault and the medical payment. That is voluntarily.

Now, if we are going to sit here as superintendents and commissioners of insurance for the country, we are very concerned now

about the affordability of the insurance product, and what is going on on the road today is going to soon make it unaffordable for the public. This is a logical first economic step.

Senator DANFORTH. You believe it would be a 30-percent reduction in the cost of insurance?

Mr. CORCORAN. That is what the companies have voluntarily done.

Senator DANFORTH. That is medical insurance?

Mr. CORCORAN. And the liability insurance coverage on it. It would cover the no-fault, the medical payment, and the bodily injury liability coverage on the policy.

Senator DANFORTH. Thirty-percent reduction if there were passive restraints?

Mr. CORCORAN. Yes, and so the rate of insurance in New York City, for example, I would guess unfortunately, because of the rate of premium payment, it would pay for itself in 2 to 3 years.

Mr. GILLEYS. As the insurance commissioner for the State of Connecticut, I am prepared to make that same representation.

Senator DANFORTH. How about you two gentlemen? Do you have a view as to whether or not the carowner could realize a reduction in insurance premiums?

Mr. SCHAFFER. Senator, as I believe you are aware, we were the first company back in the early 1970's to offer a discount for airbag-equipped cars. And the testimony from—and it has been pretty unanimous in the business, that probable savings when all cars are equipped with airbags would be 30 percent on all the injury coverages applicable to automobiles.

There is no doubt that if you are going to save 9,000 lives and prevent anywhere from 60,000 to 150,000 serious injuries per year, that you have to have a major impact on the cost of insurance.

The cost of insurance, particularly in the liability coverage, follows very promptly the experience, and you are weighting the most recent year the most heavily in setting your rates. So even without any administrative action or voluntary action, the rates would come down very promptly.

Most companies have volunteered an advance discount on the airbag-equipped cars that applies to the coverages which relate to the injury to the occupants of those cars that are equipped with airbags.

Senator DANFORTH. You would say about 30 percent also?

Mr. SCHAFFER. Yes.

Senator DANFORTH. How about you, Mr. Beck?

Mr. BECK. Yes.

Senator DANFORTH. The same, about 30 percent?

Mr. BECK. Yes. And I should also mention that throughout the country many States have competitive ratings, different from the State of New York, where the commissioners do not mandate rates. We believe that the marketplace will account for these reductions throughout the country.

Senator DANFORTH. Now, could you guess in dollars how much this would mean a year to the average carowner?

Mr. CORCORAN. Rather than guess in dollars, I would like to point out once that this is one issue where you have the industry and the 54 regulators throughout the country in agreement.

Mr. GILLEYS. There are not many of those.

Mr. CORCORAN. I would also like to point out, there are a lot of ancillary savings that are pointed out in my testimony. You have the cost of life and accident health insurance. Workman's compensation systems would be affected. Federal survivorship and disability——

Senator DANFORTH. I understand. But as far as the owner of a car is concerned, dollar savings in a year——

Mr. CORCORAN. I could give you that figure. We will have someone run a survey on a total premium structure throughout the Nation and give you a rough estimate.

Senator DANFORTH. Does anyone have any thought in that regard?

Mr. CORCORAN. It has to be in the billions of dollars.

Senator DANFORTH. Well, per owner. I am talking about John Doe, owner of a car with an airbag. What would be the savings.

Mr. CORCORAN. That is what my testimony reflects, $330 and $330 on the other. About $660 over 10 years.

Senator DANFORTH. So that would be about $66 per year.

Mr. CORCORAN. And then, of course, in New York City it would be much higher savings.

Mr. SCHAFFER. I think Nationwide Insurance Co. did a detailed actuarial study and submitted it to the DOT record, and updated it at the last hearings. And my recollection in billions of dollars was that they had reached the number of $4,100 million annually.

Senator DANFORTH. In total insurance payments?

Mr. SCHAFFER. Total insurance savings. Most of it was automobile insurance.

Senator DANFORTH. But per individual?

Mr. SCHAFFER. They had a number and I do not recall what it was.

Mr. CORCORAN. My figure does reflect a per-individual national figure. That figure is $660 over 10 years.

Senator DANFORTH. If it is $66 per year, that means that it would pay for itself in 3 years.

Mr. CORCORAN. Three years.

Senator DANFORTH. Not to mention those people whose lives are saved.

Mr. CORCORAN. Yes. And if OMB is intellectually honest in this pursuit, they would also take in these other programs that are impacted, and I cannot see how anybody rationally could justify not mandating——

Senator DANFORTH. It is not rational; it is ideological. That is the point. It is an ideological point that they are making, and it is highly symbolic, and for that reason, do not bother them with the facts, they have made up their minds. I really believe that is the case.

Mr. SCHAFFER. Mr. Chairman, in our meetings with Secretary Lewis when he first took office, we said this is not an ideological, it is a technological issue, and it is an economic issue. And we attempted at first—we said, this is a cost-beneficial standard. This and the bumper standard are the two cost-beneficial standards, and they are two that certainly meet the test that the President and the Regulatory Council have laid down, and we would like to pre-

vent you from making a major error in your administration in moving forward to rescind these, because they meet every test that has been laid down by this administration. We still believe that.

Senator DANFORTH. What is the difference between a 5-mile-an-hour bumper and a 2½-mile-an-hour bumper as far as the carowner and his insurance premium is concerned?

Mr. SCHAFFER. Well, in our testimony we put a $275 to $350 cost over the lifetime of the car from property damage, liability, and collision coverages of having a 2½-mile-an-hour bumper, in fact.

Senator DANFORTH. How much is that over the life of the car?

Mr. SCHAFFER. Between $275 and $350, depending on where you are.

Senator DANFORTH. So when Mr. DeMuth says that the cost per car is, I think—what did he say, $23, something like that, $28? Your testimony is that, as far as the carowner is concerned, in the first year he would recover any additional costs?

Mr. SCHAFFER. Yes, and there is no doubt that the current work by the Insurance Institute on Highway Safety proves the truth of our statements. We also said, if you are going to go to an ornamental bumper, then prohibit any bumpers at all, because all you are doing is making us pay more money replacing an ornamental item. It would be cheaper to repair the cars if they did not have bumpers.

Senator DANFORTH. Your view is that a 2½-mile bumper is an ornamental bumper?

Mr. SCHAFFER. It has some value in the very low-speed, walking-speed crashes. But if you get over the 2½-miles an hour, then it is just more expensive to replace.

Senator DANFORTH. Was that figure that was given by Mr. Schaffer, $275 to $350 over the life of the car in insurance difference, is that about right as far as the rest of you are concerned, or do you not know?

Mr. CORCORAN. That is correct, because I am now looking at a program where we would be giving certain discounts, mandated discounts, to people who have certain types of vehicles. If your car does have a 5-mile-per-hour bumper, then the company is required to give you a percentage discount. If you do have airbags, and that type of thing.

That is a program we are going to start in New York. Perhaps that is the only way to do it.

Senator DANFORTH. Just from your standpoint, for an administration that prides itself on cost-benefit analyses, looking solely at the question from the standpoint of money, not from the standpoint of pain, misery, lost lives, aggravation or anything else, but just from the standpoint of money on a cost-benefit analysis, in your judgment is there any rational basis for rescinding the passive restraint rule?

Mr. CORCORAN. It borders on stupidity. It is an incredible—I would ask this administration to caution itself when the premium on insurance becomes unaffordable. It is rapidly going that way, with the help of—we have an aging population, the cost of health care is rising tremendously. And soon, if we do not do something, insurance will be unaffordable.

So if this administration wants to take credit for that, gladly.

Senator DANFORTH. Would the rest of you agree with that?

Mr. BECK. I not only would agree with it, but if it had been true, if his statements were true, then I suppose my question is, why was this argument not made before the Supreme Court, which it was not, as a reason for rescinding it?

Mr. SCHAFFER. Mr. Chairman, I would say it is not only true; it is more true than it was when the hearings were held, because the health care costs keep rising. I think, as Mr. Smith indicated in his letter to Secretary Dole, there are new, more advanced airbag systems which will operate even better than the ones that produced the previous cost-benefit analysis.

So everything is working toward the fact that probably the cost benefits are even greater than were estimated, and certainly, as indicated by Professor Nordhaus and others, they existed before.

Senator DANFORTH. With respect to the bumpers, it is my understanding that the alleged savings and costs in manufacturing the car by going to the 2½-mile bumper was not in fact passed on to the consumer; is that correct?

Mr. SCHAFFER. We have seen the reports and we did not see any reduction in the cost of replacement parts, initially at least. Apparently the sticker prices were not reduced on midterm changes. Whether ultimately there would be any savings at all, we do not know, but we have not seen any evidence of it yet.

Senator DANFORTH. And looking at this again from the administration's point of view, which does not have anything to do with the aggravation to the carowner going to the shop, getting a replacement car, filling out reports, all the things that are involved in the accident—this is an administration which is interested in one thing and one thing only, and that is money.

Looking at the bumper standard from the standpoint of money, is there any rational basis for going from a 5-mile bumper to a 2½-mile bumper?

Mr. SCHAFFER. The only rational basis was to go the other way and maintain the standard. I might say, Mr. DeMuth said he didn't understand any reason to have bumper standards. But the reason—there was just released a study by the Department of Transportation that said the standard that requires the side guidelights on the side of the cars for the front and the rear, the extension of the parking lights and the tail lights, has prevented 106,000 accidents and 97,000 injuries annually.

Now, those are the primary lamps that are protected by the bumpers. So there is a definite safety item involved also in the bumpers, and on the safety side alone the bumper standard should never have been degraded.

Mr. CORCORAN. I think what we have testified to today is that the insurance industry is willing to pay, is willing to pay through the premium structure for these items, because in the very short run the insurance industry will immediately benefit from its experience.

There is no rational reason, and ideologically it is stupid. It has no effectiveness, and if insurance becomes totally unaffordable because of it then let the Reagan administration live with that.

Senator DANFORTH. Your testimony is that there is no rational basis as far as the cost-benefit analysis is concerned for the 2½-mile——

Mr. CORCORAN. Absolutely, nor have we been asked to provide our expertise and information. We have submitted it. No one has ever contacted us. I must say, our department has been nationally known as one of the leaders in insurance regulation, with our expertise. We would gladly sit down with them and explain to them the insurance——

Senator DANFORTH. But again, it is your view that there is no rational basis from the cost-benefit standpoint?

Mr. CORCORAN. Absolutely.

Senator DANFORTH. Gentlemen, thank you very much.

Dr. Arms, Dr. Vinetz. Dr. Arms, it is nice to have a constituent with us this morning.

STATEMENTS OF ARNOLD V. ARMS, M.D.; ROBERT S. VINETZ, M.D., CHAIRMAN, TRANSPORTATION HAZARDS COMMITTEE, AMERICAN ACADEMY OF PEDIATRICS; AND ROBERT R. TIERNAN, ATTORNEY

Dr. ARMS. Thank you, Senator.

I consider it a real duty to be here. It is a privilege. And at the same time, I feel it is kind of ludicrous, my being here again for the third time within 10 years. We are discussing the same issues that were discussed 10 years ago, with still nothing having been really seriously accomplished to attain our purpose.

Now, I am here at the invitation of the National Coalition To Reduce Car Crash Injuries. And I have become a member also of this coalition.

What concerns me is not only that as a private citizen we are not allowed the privilege of having the means of protecting ourselves and defending ourselves from the dangers associated with car crashes, but also because we feel that we represent the actual living proof that we have something that is practical and useful with an airbag.

There is not a single day when I get into my car that I wonder what car injury I am going to see on the road or whether I am going to be involved in it. And I am sure that all of you wonder the same thing when some of your loved ones have been involved in a major crash which could result in death that could have been prevented.

As a physician, I am very concerned over the fact that we do not make quite enough of an issue of the real impact of a crash. Certainly the death, the mortality figures that are given of 9,000 or 10,000, whatever it is, is only a very small part of the problem. While we regret the loss of those thousands of lives, what about the thousands and thousands of injuries?

Now this coalition is looking at the problem of the quadriplegics, the paraplegics, the epileptics, and other brain damages which are really responsible for the deaths and the permanent effects of these crashes. And I think in talking about protective devices we need to focus more and more on the value of the airbag in protecting one.

Now, how did I happen to have an airbag? Just coincidence. Otherwise, I would not be here today. I had a friend who went broke in his car business in 1974. General Motors did not provide him any motor cars for a period of 3 months. I found out his financial condition, so I let him have my car to sell. I said, order me a new one. Well, he said, I do not know when I will get one. I have not had one for 3 months and I am going broke.

I had to go to Philadelphia to a medical meeting. I said, well, if you get one put it in my garage and when I come back I will have a car. Well, the next day General Motors provided my friend with a car and it had everything in it.

I did not know anything about the airbag. It was a complete total surprise to me, and when I found myself in a head-on collision with a big transport bus, there was this beautiful thing that saved my life. It deployed and deflated in an instant. I never saw it. But there was the glass all over the bag and car. I was safe, I was alive, and I am the living proof that this was the real test of whether the airbag is worthwhile or not.

By use of the dummy, we have already seen what happens. We have seen dummies shown time after time after time. But one person that is alive represents much more than what a dummy can show. And we have here the privilege of having other people who have been involved in crashes, and they are the living testimony as to the benefit of the airbag as an ideal passive restraint.

I would like to really offer you a short movie of some of the car crash victims, and I think this will give you a vivid picture of what we recognize as a major problem that could be solved if we just set our minds to do it.

Thank you very much.

[A movie is shown.]

[The material referred to follows:]

SCRIPT: INTERVIEWS WITH SURVIVORS OF CRASHES IN AIRBAG-EQUIPPED CARS

Arnold V. Arms, M.D. (Crashed October 7, 1975; Overland Park, Kans.): About five o'clock in the evening, I left my office after a very hard day's work to make a housecall, and within a short distance of my destination I became drowsy, and the first thing I knew I was headed head-on for a collision with the biggest city transport bus that's available. I recall very well saying to myself, "Well, this should be your last housecall." The bus was going about 20 or 25 miles an hour, and I estimated that I was traveling about the same speed when we collided head-on. I had a car with air bags, but I was not wearing my belt. I recall very well, within a few seconds after the crash, seeing what had happened—the air bag filled the front of the steering wheel and it was lying on my lap. I could see I was alive. I could see that I had no broken bones. To my surprise, I didn't have a headache. I did not have a whiplash injury. I was able to walk. Nearly every doctor that's stopped me wanted to know how they could get an air bag, that they wanted one for their own safety. The air bags had certainly done something that I had never realized was possible with any piece of safety equipment.

Chris Burns (Crashed August 2, 1975; Lake Forest, Ill.): I didn't know at the time that I was going too fast and I was taking it too steeply. And so I came up and headed for a rock, and then I grazed off the rock and headed across the intersection and into a tree. And then all I see is this tree is getting bigger and all of a sudden—Boom! And that's when I got my first look at the car, and I realized how bad it was, and I realized that it was totaled. It was just fantastic that I survived that, because I hit the tree right in line with my left headlight and it shoved the whole steering column back about a foot, right into my stomach.

Loussanda Harris (Crashed May 21, 1975; Landover, Md.): My kids were frightened but no one was injured. I received a fractured thumb, and my oldest daughter had a few abrasions on her face, but other than that there were no serious injuries.

After the accident and the air bags were out, I said to myself, you know, "My God, if these air bags hadn't been here we all would have gone through the windshield." I just think that if it had not been for those air bags, you know—I hate to even think what would have happened.

Debra Bell (Crashed September 5, 1974; Somers, N.Y.): It was a car coming out of a side street, and she continued to go across the road, and I tried to veer the car to the left, and with that we hit. I would have been hurt very badly if I didn't have them [air bags]' cause I don't use seat belts. I would have gone right through the windshield. This is the car that was in the accident, and as you can see it's all fixed up. The air bags are back, which I'm very grateful for. And this [the air bag] is our security blanket [for] my family and myself.

Russ Parrish (Crashed September 17, 1973; Winston County, Ala.): There was no time to react. It was just a matter of putting on the brakes and stopping as soon as you could. We just hit head-on at that time, and the impact speed was about 24 miles an hour. I did not have any safety belts on at the time. I felt, going into the air bag, it felt like going into a soft feather pillow or something like this. I would guess that I do somewhere between fifty and sixty thousand miles a year driving time. That's the reason I do rely heavily on the air bag.

Kenneth Gnaster (Crashed February 8, 1974; Schiller Park, Ill.): This car came right into me just head-on, and there was absolutely nothing I could do to avoid the collision. The air bags immediately were deployed. I recall absolutely nothing about the impact, of course, and my windshield shattering. And within a few seconds after that I was immediately sitting upright, looking around to see what really had taken place, and I was perfectly all right. Nothing happened to me. I was fully mobile and able to go back to work within an hour after the crash. I'm totally sold on the system, no question in my mind about it. I feel that if the air bag were made standard on the automobile, it just would relieve many families of heartbreak and traumatic experiences.

Jimmie Daniels (Crashed July 27, 1977, Cocoa Beach, Fla.): I remember the jolt of the impact. The children started crying, and Yvonne asked me, "What happened? What hit us, Nonnies?" And I said, "I don't know, darling." I just recall it being like a big, soft pillow. And I'm holding the wheel, of course, and the air bag opens and it goes all along the front of the car. I saw what we had hit, and it was a miracle to me that we were all able to get out of the car and walk over to the side of the road. I want an air bag in my car. I will not feel safe without one.

Senator DANFORTH. Thank you, doctor, very much, for a very impressive film.

Dr. Vinetz.

Dr. VINETZ. Thank you, Senator. It is a pleasure being here.

I am Dr. Robert Vinetz, a full-time practicing pediatrician, here all the way from Los Angeles, Calif. I am here representing the chapters of the American Academy of Pediatrics in California, as well as chapters in other parts of the country.

I would like to talk today about young people, motor vehicle trauma, and Humpty Dumpty. I hope that the reason for the Humpty Dumpty will become evident in a few moments.

Nursery rhymes are allegories which help teach children how to view the world and tell a great deal about how adults actually do view the world. For example—and I never thought I would be reciting this in Congress, but here it is:

> Humpty Dumpty sat on a wall;
> Humpty Dumpty had a great fall.
> All the king's horses and all the king's men
> Couldn't put Humpty together again.

So you may be saying, "What the devil does Humpty Dumpty have to do with the U.S. Senate oversight hearings on the NHTSA and automotive trauma? Well, I would like to suggest that Humpty Dumpty was an accident victim. He was a crash victim of sorts. But I think even more pertinent to what we are talking about today, if we analyze this nursery rhyme allegory, is that we can see

in it a paradigm of how we now approach the problem of motor vehicle trauma.

I think we can do this by asking, "Who was Humpty Dumpty anyway? Well, he was a lot of different things, but I think for the purposes of my testimony today I would like to focus on the fact that Humpty Dumpty was an indisputably very important personage. Otherwise, why would his king have mobilized all the king's horses and all the king's men—in other words almost all the king's resources—to do what? To try to put Humpty back together again.

And this is the main point that I would like to make now: that we learned in childhood and we practice in adulthood that it is good and proper to mobilize immense resources in attempting to put back together again things which are broken.

That is what we are trying to do as physicians of the human body and as physicians of the body politic. We all want to make things better. But when in our childhood, or for that matter do we now in our adulthood, ask how could we have kept Humpty Dumpty on the wall? Or if he is going to fall, how do we prevent the harm that would occur from that fall?

Prevention is one of the great cornerstones of pediatrics. I am a pediatrician and that is why I am here today. What are we allowing to happen to our children and to our youth, and to the young parents who will give them birth and who will raise them and nurture them? We are allowing to persist an epidemic which is killing twice as many children as ever died from polio in its worst epidemic year, allowing to continue virtually unchecked the leading cause of death of young Americans.

I think you have heard a lot of these facts before. We are talking about the motor vehicle or the highway epidemic. Motor vehicle trauma is a major, major health problem. It is the No. 1 killer of young Americans ages 1 to 34 years of age; 50,000 Americans, approximately, die every year. It is a major cause of physical morbidity, the leading cause of quadriplegia, paraplegia, brain damage, and a leading cause of epilepsy. It is also a devastating source of immeasurable emotional trauma.

I was in a meeting a couple of weeks ago of victims, a victims meeting sponsored by Mothers Against Drunk Drivers. One of the mothers there explained to me the pain that she experienced when she lost her teenage son in a motor vehicle crash. She likened the pain of that loss, the tearing from her of her son, as similar to the pain that she imagined she would feel if one of her arms or legs were ripped from her body. In medical terms we call that a "traumatic amputation" without anesthesia.

Motor vehicle trauma is also a very costly health problem. In fact, it is second in dollar cost only to cancer as a leading medical expense among all the major causes of death in our Nation.

Humpty Dumpty's king, if he were sensitive or at least a cost-conscious king, would probably be appalled at the need to spend $3.5 billion to possibly even $7.5 billion dollars in direct medical expenses to try and put our people back together again.

NHTSA's own documents state that the Federal Government every year loses $7.5 billion to motor vehicle trauma, and the States lose $3.5 billion. Those losses are largely preventable.

I would like to stress this: One way or another, Americans are going to pay for motor vehicle trauma. But we have a choice: Are we going to pay for prevention of that trauma or are we going to pay billions more for treating and trying to patch up those problems?

We have to do, I think, what will in the end work. What will not work to any great extent, except possibly for young children, is seatbelts. They are now rejected by the American public in overwhelming numbers, and we feel they will continue to be rejected.

In our opinion, the most important thing that can be done that will effectively reduce motor vehicle trauma is to insure installation in motor vehicles of automatic restraint systems, particularly aircushions—airbags. They will save 6,000 to 9,000 lives a year and prevent 60,000 to 90,000 disabling injuries.

There are many misleading arguments against the aircushion. I would refer you to this copy of the Los Angeles Times editorial included in my testimony. I would like to also make this point: Short of a major military or war/no war decision, there is probably no single decision that has been made or will be made in the near future in the history of our country that will literally determine the life and death of more Americans than the issue of Federal motor vehicle safety standard 208 and automatic car crash protection.

With this in mind, the California chapters and other chapters of the American Academy of Pediatrics affirm that the attempted rescission of FMVSS 208 was a narrowly averted national tragedy; that the Federal motor vehicle safety standard 208 should be retained, with automatic restraints being required in all new cars and light trucks; and that an effective date of the implementation of the standard should be set forthwith.

But because of the Federal administration's apparent lack of interest in wanting to assure automatic protection for our citizens, we think that the legislature also should look into this issue, and for this we commend your Senate bill 1108.

Finally, I would like to stress one more point: that we must search for mechanisms that will allow in our societal context profit from prevention. Right now, unfortunately, for too many who control the issue there is no profit in prevention.

Furthermore, we must find a mechanism or mechanisms to redirect some of the many billions of dollars that are now spent as a result of motor vehicle trauma toward the countermeasures that could instead prevent much of that trauma from ever occurring in the first place.

I thank you.

[The statement follows:]

STATEMENT OF ROBERT S. VINETZ, M.D., F.A.A.P., CHAIRMAN, TRANSPORTATION HAZARDS COMMITTEE, AMERICAN ACADEMY OF PEDIATRICS CALIFORNIA CHAPTER 2, ON BEHALF OF CALIFORNIA CHAPTERS AND OTHER CHAPTERS OF THE AMERICAN ACADEMY OF PEDIATRICS

YOUNG PEOPLE, MOTOR VEHICLE TRAUMA AND HUMPTY DUMPTY

Children are taught how to think about problems. And those processes of thought, fashioned for children by adults, carry on into adulthood—and, we believe, play a large role in how we view the world.

For example, the well known nursery rhyme, umpty Dumpty:

Humpty Dumpty sat on a wall
Humpty Dumpty had a great fall
All the king's horses and all the king's men
Couldn't put Humpty together again.

So what does Humpty Dumpty have to do with United States Senate Oversight Hearings on the National Highway Traffic Safety Administration and on the subject of motor vehicle trauma? Well, Humpty Dumpty was a crash victim of sorts. But we can analyse this nursery rhyme/allegory and see in it a paradigm of how we approach the problem of motor vehicle trauma.

What is the Humpty Dumpty tale really telling us and teaching our children? We can find out by asking first, "Who was Humpty Dumpty?"

First of all, Humpty Dumpty was an egg, the embodiment of the potentiality of life (like our children and youth). And he, as are all eggs, was fragile. Further, Humpty Dumpty was a peaceful, non-aggressive, "good egg," before the fall. Somehow Humpty was put in a very dangerous position. Humpty Dumpty was just sitting there. He was a victim of an "accident."

Further, Humpty Dumpty was apparently a very important personage. Otherwise why would the king order the expense and effort such that "all the king's horses and all the king's men," in other words all of the royal forces were ordered to try to put him together again.

And this is the main point: we learn in childhood and practice in adulthood that it is good and proper to mobilize immense resources to try to put something broken back together again. That is what we are trying to do as physicians of the human body or as physicians of the body politic. We all want to make things better.

But when in our childhood did anyone ask us, or did we ask ourselves, "How could we have kept Humpty Dumpty on the wall? How could we have prevented the fall or at least have prevented the injury resulting from the fall?" Prevention—Prevention—Prevention—So rarely considered and even less often practiced.

One of the greatest dictums in medicine is not "do good" but according to the Hippocratic Oath to "above all, do no harm." By extension, then, we can practice preventive medicine by allowing no harm to be done. "Prevention," this is one of the great cornerstones of pediatrics, and we try to practice this credo for the benefit of the children, youth and young adults of our society. They are, in a sense, the eggs—the fragile vessels of potential of our world.

But what are we allowing to happen to our children and our youth and to the young adults who will bring them into and care for them in the world? We are allowing, by inaction, to continue an epidemic, an epidemic that kills twice as many children as polio ever killed even in its worst epidemic year. We are allowing to continue an epidemic that has killed more than 2 million Americans, more than twice as many Americans as have died in all our nation's wars. We are allowing to rage on, unabated, the highway epidemic.

You have heard these facts but let us affirm them from a physician's viewpoint.

Motor vehicle trauma is a major health problem. It is:

1. The number one killer of young Americans 1-34 years of age, taking the lives of some 50,000 Americans of all ages annually.

2. A major cause of physical morbidity—injuring over 4 million people annually, 2 million of them suffering disabling injuries. Every time we go into the newborn nursery and see all those babies we know that unless we as adults prevent it from happening, one of every three of those babies will suffer a disabling injury someday in a car crash and one of sixty will be killed. We are especially concerned about teenagers who are at particularly high risk. Over 7 thousand teenagers die each year from motor vehicle trauma. They do so because of the especially deadly combination of being new and inexperienced drivers, of having the tendency toward increased risk-taking, of having an exaggerated belief in their own invulnerability and in experimenting with alcohol and drugs.

3. The leading cause of severe head and brain injuries, of paraplegia and quadriplegia (paralyzing over 3 thousand people each year) and a major cause of epilepsy.

4. A devastating cause of immeasurable emotional trauma, often leaving permanent emotional scars on those injured and also on the survivors of the dead victims. One mother recently described the pain of the tearing from her of her teenage son as like the pain of an arm or a leg being ripped off—in medical terms a "traumatic amputation—without anesthesia."

Further, motor vehicle trauma is:

5. A very costly health problem. Research shows that motor vehicle trauma is second only to cancer as the most expensive health problem among the leading causes of death in our nation costing even more than heart disease or stroke. (3)

Humpty Dumpty's king, if he were a sensitive, or at least a cost-conscious king, would probably be appalled at the need to spend $3.4 to $7 billion for direct medical expenses (estimates vary depending on research report and methodology used) each year trying to put car crash victims back together again and $14 billion or so for indirect costs (i.e., lost productivity and tax-base loses).

Insurance companies collect over $23 billion every year in personal injury automobile liability premiums, and pay out over $8 billion—the remaining sum $15 billion includes the cost to the insurance companies of doing business and their profit from that business. (2, V 9–10)

Additional billions of dollars in health insurance premiums are paid annually for victims of motor vehicle trauma. (1 p. V 10) Life insurance companies paid out $166 million in 1979 for motor vehicle related deaths. (1 p. V 12) The National Highway Traffic Safety Administration itself states that motor vehicle trauma costs the Federal Government $7.5 billion every year and costs state governments $3.5 billion. (1)

All this goes to pay for, among many other items, the 3.5 million hospital bed days needed to care for motor vehicle trauma victims.

6. Finally, motor vehicle trauma is the leading cause of lost person days of work productivity, with the annual number of person days of lost work effort totaling over 13 million.

Yet those deaths, injuries and economic losses are largely preventable or reducible. Humpty Dumpty can be kept on the wall or at the very least his fall can be cushioned if we make a commitment to prevention, and have the wisdom to do what works and what will also be acceptable.

One way or another, Americans are going to pay for motor vehicle trauma. But we have a choice: Are we going to continue paying many billions of dollars every year trying to put broken bodies back together again? Or are we going to find a way to invest fewer billions, but in measures that will prevent those bodies from being broken in the first place?

What will work, to a limited degree, but what will not be acceptable for most Americans, is seatbelts. The current belt usage rate is under 15 percent, even with the major effort on the part of the government and private industry to try to promote their use through public information campaigns. The vast majority of Americans reject voluntary seatbelt use, and are against mandatory seatbelt use laws. Any such laws, even if they passed, would very likely, at least for the forseeable future, result in a public backlash against such laws probably forcing their rescission. The same, we believe is likely true for mandatory automatic seatbelts should car purchasers not have a real choice between automatic seatbelts and air cushions. We fear that a strategy of the opponents of automatic protection, should they not be able to kill FMVSS 208 (the automatic restraint standard) altogether, might be to accept the standard and then produce only vehicles with automatic seatbelts. An angry "anti-belt" public, possibly even a small minority of the public, could then put enough pressure on Congress to rescind the standard altogether. And the deaths will continue.

The only currently available prevention method that will work and have as its end result a major reduction in motor vehicle deaths and injuries is, we believe, the universal manufacture of cars with automatic restraints especially air cushions. In medical terms, air cushions are a technological "vaccine." A Congressional Office of Technology Assessment report states that automatic restraints have the potential of saving 6 thousand to 9 thousand lives each year and preventing some 60,000 to 90,000 disabling injuries. (6)

There are many so called "arguments" against air cushions, but they are virtually all incorrect or are distortions of the truth smokescreens generated by air cushion opponents to protect their parochial financial interests in disregard for the health of the general public.

In fact, short of a major military or war/no-war decision, there probably has been no single decision that will determine the life or death of more Americans than the decision about what to do with the automatic restraint standard, FMVSS 208.

With this in mind, the California chapters and other chapters of the American Academy of Pediatrics affirm that:

1. The attempted rescission of FMVSS 208 was a narrowly averted national tragedy. Federal Motor Vehicle Safety Standard 208 should be retained, with automatic restraints being required in all new cars and light trucks. An effective date for implementation of the standard should be set forthwith.

2. Because the Federal Administration has not been able to, or does not seem willing to assure automatic crash protection for our citizens, the Congress should do so.

3. Air cushions are the preferred form of automatic protection because of their proven effectiveness and because they will be ready and automatically used when needed, and will not be disconnected in any great numbers as automatic seatbelts would be.

4. Air cushions should be manufactured in all or in a large majority of all new cars and light trucks, for the protection of the driver and, at least, the right front seat passenger position. If the buyer doesnt' want an air cushion, then air cushions may be considered a "delete option," for which some other form of automatic protection must be substituted (e.g., automatic seatbelts).

5. The Department of Transportation should continue to monitor all related issues, including those that bear on improving the effectiveness of FMVSS 208.

6. A massive national public information campaign should be generated to alert the public to the extent, the cost and the consequences of motor vehicle trauma as a health problem, and to inform the public of the benefits of automatic crash protection.

7. "Demonstration projects" are not and must not be allowed to masquerade as a substitute or temporary surrogate for the implementation of the automatic restraint standard.

8. Manual seatbelts should still be available in all seating positions, this is to:

(a) To assure the ability to secure infant/child car safety seats in any passenger position; (b) offer protection to the driver and passengers in the minority of serious crash situations where air cushions are of limited or of absent effectiveness.

9. Other motor vehicle trauma countermeasures should be identified, developed and implemented at both the governmental and private sector levels. In this regard, we take special note of and support the intent and many of the specific provisions of S. 1108, the "Highway Safety Act of 1983." (Danforth, R-Mo.)

10. Mechanisms must be sought:

(a) To subsidize or to help make profitable the private sector investment in motor vehicle trauma prevention counter measures (i.e., to facilitate "profit from prevention") and or; (b) to find mechanisms to redirect some of the many billions of dollars that are now spent as a result of motor vehicle trauma toward countermeasures that could, instead, prevent much of that trauma and its attendent costs.

REFERENCES

1. Final Regulatory Impact Analysis; Amendment to FMVSS 208, Automatic Crash Protection, Recision of Automatic Occupant Protection Requirements. National Highway Traffic Safety Administration, Plans and Programs, Office of Program and Rulemaking Analysis, October 1981.

2. Blincoe, L. and Luchter, S., of the National Highway Traffic Safety Administration: The Economic Costs to Society of Motor Vehicle Accidents, Society of Automotive Engineers Technical Paper Series number 830614, February-March 1983.

3. Hartunian, N. and Smart, C. and Thompson, M., "The Incidence and Economic Costs of Cancer, Motor Vehicle Injuries, Coronary Heart Disease and Stroke: A Comparative Analysis" American Journal of Public Health 70:129 1980.

4. "Status Report," August 21, 1979 pg. 18 "Public Consistently Favors Automatic Crash Protection," Insurance Institute for Highway Safety.

5. "The Economic Costs to Society of Motor Vehicle Accidents," United States Department of Transportation, National Highway Traffic Safety Administration 1983.

6. "Background Paper #1: Mandatory Passive Restraint Systems in Automobiles: Issues and Evidence," in the Monograph Series "Technology and Handicapped People" September 1982, Congressional Office of Technology Assessment.

7. "Status Report," September 23, 1981, "Teens and Autos: A Deadly Combination" Insurance Institute for Highway Safety.

Senator DANFORTH. Thank you.

Mr. Tiernan?

Mr. TIERNAN. Thank you.

I live in Bethesda, Md., and practice law in the District of Columbia, and I might add that I think I would have a very difficult time representing OMB or DOT from what I have heard today.

I am the father of three children. Two are living and one is dead. Timmy, the youngest of the three, died last January at the age of 15. Timmy was in a coma for almost a year and a half, 536 days, to

be exact. That is 536 days, day after day. Timmy was irreversibly head injured in an auto accident on August 7, 1981. He was then 13.

Timmy, two of his friends, and I were on our way to a weekend trip at a place called Mt. Storm, W.Va., which is about an hour west of Romney, W.Va., the largest town in that area. We stopped in Romney to pick up groceries for the weekend.

We put the groceries in the rear, so it was necessary for Tim and his friend Danny Capello, who was 11 at the time, to sit in the front. I was driving, Danny was in the middle—he had fallen asleep—and Timmy was on the far outside, what is known as the death seat.

I am sorry to say that we were not belted. We were not. In my written statement I say that belts would not have made a difference, but having talked with some people today, they might have. I do not know. But we were not belted. Timmy was not belted, none of us were.

About 10 miles west of Romney on U.S. 50, which is a very windy road, I was going through a sharp left turn, a curve. It was a really rainy, foggy night. The car went off the shoulder. At first I thought nothing about it. It has happened before. Those are narrow roads up there. But suddenly I realized, hey, I am in trouble. I cannot stop this car, I cannot skid this car, I cannot bring this car under control.

The next thing I recall, was seeing trees everywhere. It turns out there were trees 15 feet off the road. It seems like I was in the middle of a forest. I remember seeing a tree to the right. I do not think I could control the car, but I was trying. I recall trying to avoid that tree, and apparently what happened was I ricocheted off that tree, and dead ahead was a tree. I could not—I could not avoid it.

Just at the time I hit the tree, I think Timmy yelled something about we are going to hit a tree, because I remember looking at him. And we hit it. We hit it toward the right front of the car, head on to the right front.

And I looked at these pictures today. Those cars are badly damaged. This car, if you saw the pictures of the car I was driving, it was not badly damaged. I do not think I hit that tree at more than 15 miles an hour. I was not speeding.

But what I saw was just grisly. The car hit the tree. The seat went right down the track off the end, underneath the dash; Timmy went with it, headfirst, right into the dashboard.

I do not remember seeing this happen, but apparently the door flew open and he went out, and because the seat was up against the doorpost, his feet were caught in between and he probably went out like that [indicating].

I went around to look at him, and I knew then that—I just could tell it was all over.

I am not a technical expert. I have heard about airbags, I have seen some movies about airbags, I have read about airbags probably as much as the average citizen. I know airbags would have helped. I think that Timmy would not have been scratched had their been an airbag. At least I am sure that he would not have been badly hurt.

But he was. The next year and a half, it was just torture. And maybe Mr. DeMuth from OMB ought to go to one of these facilities where these kids have to stay and see them, see the pictures of these kids on the walls before they were injured and then look at them now. They have lost all their muscle tone. They look like zombies.

I think he ought to do that, and maybe he would not just talk in dollar signs. And I was shocked to hear that he did not even know—he is a responsible person in the administration but he does not even have an estimate as to how many people lose their lives as a result of not having these safety features. He knows his theories but that is just ideology.

I am a lawyer. I am trained to base my opinions on fact.

Anyway, it was a terrible year and a half, terrible for Timmy's mother, his brother, and his sister. His sister dropped out of school. She is back now. His mother spent every day with him. There are a lot of problems in caring for these people. There are a lot of things doctors do not know, with all due respect. Timmy had a 10-hour operation, two bouts of gram negative meningitis, tubes in his head to relieve pressure, tubes in his stomach for feeding, et cetera, et cetera, et cetera. It was just a horrible, horrible experience.

He died on January 24 of this year, and while we all had grief, it was a blessing. It was a blessing because one of the things that used to bother me was to see him lying there, I would say to myself, does he know the condition he is in? If he knew the condition that he was in—he was a normal kid—he would not want to be lying there like that.

So it was a blessing.

Mr. Chairman, I do not think Timmy's case is unique. It happens hundreds, probably thousands of times each year. And I do not understand why the automobile industry refuses to use the technology available to it. And I certainly do not understand why this Government does not make the automobile industry use that technology.

It is not a debate about States' rights or anything esoteric like that. It just has to do with being responsible, with being compassionate. It is not enough to say that Timmy should have been belted. He was not belted. Neither are many other children.

He was an innocent victim. It was not his fault.

I do pray and I hope that some way will be found—I have two other children I worry about—to make airbags in automobiles mandatory.

Thank you.

Senator DANFORTH. Gentlemen, I want to thank you for enormously powerful testimony, all three of you.

I do not really have any questions because I think that any question would be an anticlimax. That is as powerful a panel as I have ever heard since I have been in the Senate.

I want to just add two comments. You talked, Dr. Arms, about people, the effect on people, and Mr. Tiernan, about your personal experience and your son, and you, Doctor, talked about people and also about the economic consequences of automobile accidents. I hate to say that, but with this administration, that is not relevant. That is a waste of time, because what is relevant does not have

anything to do with people, does not have anything to do with families, does not have anything to do with the economic consequences even. It is not cost benefit. It is a hoax.

This is ideology. That is all it is, and the Office of Management and Budget is the ideological watchdog of the administration, and it has taken an ideological position, and it does not matter to them about the human component. It does not even matter about the cost, just find out some way to justify rescinding the rule on airbags.

I understand strong philosophical positions and admire them, but there is a tipover point between the strong philosophical position and losing your senses, and that is what this is. It is really extremism, and it is wrong.

I would just like to add one other comment, and that is to you, Mr. Tiernan. God bless you.

In the drunk driving area, the difference in drunk driving legislation—and there has been a significant difference and a saving of human life because of legislative initiatives in drunk driving and better enforcement of those laws that are on the books. There has been a major change in the last decade, and the change was brought about by one group, and that group is parents of kids who were killed. It is one of the most active citizen groups in this country, and they have mobilized themselves, and they have gone to State legislatures, and they have come to Congress, and they have made a difference, and they have saved other kids.

And maybe beyond the area of drunk driving and the whole area of traffic safety where there are things that can be done, parents can play the same role. I really appreciate your testimony. It was very, very powerful, and I appreciate each one of you being here.

Thank you very much.

The final witness is Mr. C. R. Blydenburgh.

STATEMENT OF C. R. BLYDENBURGH, SAUNDERSTOWN, R.I.

Mr. BLYDENBURGH. I assure you I am into highway and vehicle safety, and not toys and models, but sometimes they can be extremely helpful in making a point.

Mr. Chairman and committee members, I wish to thank you and this distingushed committee for affording me the privilege of testifying at this important hearing.

My initial reaction when I read bill S. 1108, better known as the Highway Safety Act of 1983, was that the portion relating to drunk driving should have been contained in a separate bill in order to receive maximum attention. It was my belief in the beginning that any law enacted on this issue should be at the Federal level in order to minimize the possibility of misinterpretation of the penalty imposed.

Based on the results to date, it is unfortunate that the Presidential Commission on Drunk Driving has not yet addressed the problem of attempting to detain a person who is obviously too drunk to drive. There is an urgent need to create a legal procedure which would enable a person too drunk to drive to be detained and thus prevented from entering a highway.

Other than the above, it is my intent to limit my testimony primarily to the bumper issue, and especially those factors which continue to be ignored. There have been many hearings over the years on this issue, but to date none have been devoted to the overall concept of the bumper and the fact that for 11 years it has been limited to passenger cars only.

The past 2 years have been devoted to the needless hassle over the 2½ versus 5-mile-per-hour bumper, and I say needless because the strength means nothing as long as all other categories of vehicles are exempt.

In 1969 I contacted former Transportation Secretary John Volpe with the hope of convincing him that a uniform bumper height was essential if the bumper was to accomplish its intended purpose. In 1972, a bumper standard was established, and many thought it was a tremendous advance because it incorporated the shock absorber feature. But there was no provision for uniform height. In due time it was decided that the space between 16 and 20 inches above the ground shall be occupied with a bumper. This was in 1974, and it soon became obvious to me anyway that the combination of the 4 inch minimum width plus the lack of any control over the contour, and the unpreventable effect of sudden braking prior to even a minor collision, canceled out the intended protection.

Although I did not become aware of it until sometime after the uniform bumper height was established for passenger cars, the Bureau of Motor Carrier Safety had recognized the need for a device to prevent cars from underriding the rear of large trucks and trailers. This was in 1952, and was required only on trucks operating under ICC regulations, which left many types of trucks exempt.

The ground clearance of the underride device varied from 23½ to 29 inches. This simply compounded the problems caused by singling out only one category of trucks or trailers. Here it is 30 years later, and no attempt has been made to upgrade this ineffective protection. The probability of side underride continues to be ignored. I cringe every time I see one of the tremendous 18-wheeler gasoline tankers with all of the pipes and valves beneath it which would be ruptured when hit. I saw this happen many years ago in Chicago.

When it was decided in 1974 that a uniform bumper height was essential, but for passenger cars only, I believe it is safe to assume that no thought was given to the disparity between the chosen height and the wide variation in the heights of the underride protection device, especially since the standard excluded all other light vehicles or the fact that the lowest one was 3½ inches higher than the top of the passenger car bumper. Invariably, in the case of side underride, the occupants of passenger cars or other light vehicles are killed or decapitated, and it is conceivable that the probability of side underride will increase considerably with the increased use of tandem trailers, especially on secondary roads where there is a preponderance of curves and intersections.

It is amusing and unfortunate that the major safety hazards associated with the big rigs were not resolved before granting approval of the extended use of tandems.

The sensible approach back in 1974 would have been to seek a maximum degree of compatibility between the bumpers of all vehicles having access to our Nation's highways. The current "fad" to increase the height of certain types of utility vehicles has added to the mismatch problem as their bumpers end up being a foot or more higher than on the cars, and at the present time, this modification is perfectly legal. This practice should be outlawed for obvious reasons.

Safety is seldom a factor when passenger cars are involved in minor rear end collisions, but the repair bills are usually horrendous, especially with front-wheel drive. However, safety does become a major factor when any of the above vehicles hit or are hit by the larger trucks. It is essential that this deplorable situation be resolved without further delay, and the Department of Transportation should cooperate in expediting positive action. Should I stop?

Senator DANFORTH. Could you wrap it up in another minute or so?

Mr. BLYDENBURGH. I think so.

The failure on my part to persuade NHTSA to upgrade the bumper standard and to extend it to cover all other light vehicles prompted me to consider other means of offsetting some of the inadequacies. One was the use of high mounted brake lights. A NHTSA test proved that a single, high-mounted brake light reduced rear-end collisions considerably. GSA has decided to require the single light on 5,000 cars shortly.

It is encouraging that NHTSA has finally recognized the need to upgrade all exterior lights. It has been wrong to allow the auto manufacturer to choose between red and amber for rear turn signals. With all the recent emphasis on aerodynamics, it is ridiculous that it took so long to recognize the advantages of aerodynamically shaped headlight lenses. The practice of recessing any of the front lights has only served as a trap for snow, ice, slush, and so forth. NHTSA's outlook on this has been that it is the operator's responsibility to cope with the problem, and I have a letter from NHTSA saying just that.

For several years I have been on record as opposing any form of mandate for the passive restraint requirement, and especially the airbag. Back in 1969, former Transportation Secretary Volpe was really excited about the airbag and was anxious to proceed. I suggested that any preliminary usage should be limited to the passenger side until it could be proved that an unexpected or accidental "firing," which could blind the driver momentarily, could not occur. Ironically, GSA has decided to equip their 5,000 new cars with a single airbag on the driver's side. So the results will not be conclusive in terms of protection for the passenger.

When it became obvious that the Carter administration was determined to mandate the passive restraints, I became even more opposed for the simple fact that so little had been learned about its limitations, and so much was being withheld from the consumer, including the need for seatbelts in conjunction with the airbag or—and this was ignored by the insurance people here—whether or not there would be product liability insurance coverage provided.

Had the Carter administration gone along with former Secretary William Coleman's unique arrangement with the auto industry in

1976 to equip 500,000 cars with airbags to obtain an impartial, real world evaluation of this unproven device, everyone involved, including the consumer, would have been in a better position to decide if the airbag was in fact acceptable as a means of reducing fatalities and serious injuries

Dr. Arms' slides were fantastic, but they are all limited to frontal crashes and thus deceptive. Former Transportation Secretary Brock Adams' selfish action to cancel this arrangement deprived us of that vital information. Any current thoughts of reviving its use should be limited to a voluntary decision on the part of the consumer. Nobody, including the members of any court, should be allowed to make that decision for the person whose life could be taken by it rather than saved.

Improved side protection, especially on the small cars, is essential. The resurrection of the convertible makes one wonder just how much importance is attached to this and the fate of drivers and passengers in rollover accidents.

A serious disadvantage of excessive side protection in certain existing models is the fact that the rear windows cannot be opened, but this is not quite as bad as power windows which cannot be opened if the power fails or the battery is disconnected to prevent fire after an accident. In fact, the possibility of the latter dictates the need for a simple method for use by the rescue crew to open the electrical circuit.

In view of the increasing number of large truck accidents, consideration must be given to occupant protection. Until recently, it was considered neither practical nor essential to incorporate many of the crash protection features because of their massive size. At no time should this reasoning have prevented a concentrated effort to eliminate the major safety hazards associated with the mammoth rigs. The major ones are inadequate protection against rear end underride, no protection against side underride, no adequate means of eliminating the excessive splash or spray which literally drowns a car, and no means of eliminating the lifting effect they have on these smaller cars when the latter are passed at excessive speeds.

Senator DANFORTH. Thank you very much, Mr. Blydenburgh, for your testimony.

Mr. BLYDENBURGH. I am just hoping that during my talk people did notice the purpose of what I have here. This one illustrates the effect of sudden braking, one of the major reasons why the bumpers we have today are not worth a tinker's dam, and that is emphasized, in some photos I have here, if anyone wishes to see them. They show how the contour of a bumper compounds the effect of sudden braking.

So, Mr. Schaffer was right in a sense. Let's do away with bumpers because they are not any good as they are now under existing conditions.

Senator DANFORTH. Thank you very much, sir, for coming.

[The attachments referred to follow:]

Disadvantages of Air Bags

(Compiled in March 1977)

1. If an accident involves two impacts, the first of which might "fire" the air bag, there is no protection left for the second impact which could be the most severe of the two.
2. May give too many drivers a false sense of security in the event he is a careless driver or if he or his vehicle are in no condition to be on the highway.
3. Could have an adverse effect on the auto industry's responsibility to design and build safer cars.
4. Like any mechanical device, it could fail to operate as intended in frontal crashes (only) for a variety of reasons.
5. Like any mechanical device, it could "fire" when it is not intended to and cause an accident which could be fatal to more than just the driver of the car with the air bag which malfunctioned.
6. Like any mechanical device, certain vital components could become corroded to the point that the activating mechanism would become inoperable under any and all conditions.
7. There is (as yet) no guarantee or information on the useful life of the air bag itself or its vital activating components.
8. There is no known manner in which to periodically test any portion of the unit for possible malfunction or failure due to age, effects of the elements or simple human "mischief." Note.—It has been stated that the standard calls for a monitoring system to advise the driver if the system is operable.
9. There is no assurance that any reliable insurance company will even consider writing product liability coverage on such an uncertain device.
10. It has never been stated how much more the consumer will have to pay over and above the unknown cost of the air bag to help defray the exorbitant cost of product liability insurance in the event it is ever made available to the manufacturer of the air bag and/or its components.
11. There has never been any reliable information on what the consumer will have to pay for the uncertain protection.
12. No attempt has been made to advise the consumer what it would cost to replace air bags which had fired or to repair the damage caused by an "accidental" explosion, especially to the dashboard or glove compartment on the passenger side where "his" air bag is stored.

U.S. Department of Transportation,
National Highway Traffic Safety Administration,
Washington, D.C., August 29, 1980.

C. R. Blydenburgh,
Saunderstown, R.I.

Dear Mr. Blydenburgh: This is in response to a request from Ms. Esther Peterson, the Special Assistant to the President for Consumer Affairs, that I reply concerning auto safety regulations issues in your letter of June 9, 1980, to her.

Pages III, IV, V and VI of your letter comment on several issues which are of concern to the National Highway Traffic Safety Administration (NHTSA) for safety regulations of motor vehicles. The NHTSA establishes minimum safety requirements for motor vehicles expressed in performance terms. We do not require that any specific design or device be used. Manufacturers are free to use whatever device or design they choose as long as they meet the performance requirements. This approach permits manufacturers maximum freedom to compete in a free market place to the ultimate benefit of all concerned.

In regard to bumpers, all passenger cars must withstand substantial barrier and pendulum impacts without damage in order to meet requirements of Part 581, Bumper Standard. Light trucks, vans, and multipurpose vehicles are, for the present, not included in these requirements. However, most of these vehicles conform to the height requirements of the Standard, and those that do not are often special use vehicles for occasional off-road operation or have heavy duty load carrying capability. We are looking into the question of damage reductions with truck bumpers to the extend that trucks (including multipurpose vehicles) are used in lieu of passenger cars by private owners, and to the extent that truck bumpers do not match passenger car bumpers and might override them.

Your letter involves several issues relating to lamps. Federal Motor Vehicle Safety Standard (FMVSS) No. 108 specifies the requirements for these lamps but permits design variations within limits. Tables II and IV, and Section S4.3 of this

standard list most of the location requirements. In many cases these requirements do not segregate the location of one type of lamp from the others. The manufacturer decides on these arrangements within the limits. The designer may consider many factors in selecting the types of lamps and the configuration, and one of these factors should be safety. Reasonable variations in size, intensity, arrangements, locations, and combinations should not significantly affect safety.

After several studies involving the color for rear turn signal lamps, there is no reliable information to prove that red or yellow is the safer color. Other countries require these lamps to be yellow (amber), but these decisions seem to be based on preferences or intuitive reasoning instead of sound technical or accident data. For this reason FMVSS No. 108 permits an option of either red or yellow.

We are aware that for several reasons the intensity of lamps may be decreased and this could affect safety. Whether the emitted light is reduced temporarily by accumulation of dirt, snow, ice, moisture, or other materials on the lens or by deterioration and failure, it is the operator's responsibility to correct the problem. State and local authorities have to enforce these lamp requirements. To permit more freedom in design and from lack of accident data to justify regulation, at present FMVSS No. 108 does not include requirements related to cleaning and maintenance of lamps and lenses.

We appreciate knowing of your interest in our proposed rulemaking to standardize the instrument panel location of certain controls and displays. Research is now in progress to determine the present status of such standardization in the industry and where further regulation will be necessary.

It is true, as you point out, that the law prohibits the NHTSA from requiring seatbelt ignition interlocks. However, manufacturers may voluntarily use them and whether or not they do so is strictly up to them. Such decisions are probably based on marketing surveys, competitive factors, product liability, etc., which are the primary factors that serve as the basis for virtually all product decisions in a competitive market place.

Your interest in motor vehicle safety is appreciated.

Sincerely,

A. C. MALLIARIS,
Director, Office of Vehicle Safety Standards.

Senator DANFORTH. Now, Mr. Kelley, you have your cars outside. I understand it is raining.

Mr. KELLEY. We have the cars outside, and they are being rained on very heavily, on the C side of the street. Perhaps those who want to can stand in the doorway down there and we can at least point out to you. You do not need to get too close to one of the airbag crash cars to know that it was very, very severely damaged, and that without an airbag, the people in it might have been hurt very badly.

Senator DANFORTH. OK. We will be right down. We will try to stay dry.

Thank you. That concludes the hearing.

[Whereupon, at 12:40 p.m., the subcommittee recessed subject to the call of the Chair.]

[The following information was subsequently received for the record:]

NATIONWIDE INSURANCE COMPANIES,
Columbus, Ohio, September 21, 1983.

Hon. JOHN C. DANFORTH,
Chairman, Surface Transportation Subcommittee, Committee on Commerce, Science, and Transportation, U.S. Senate, Russell Senate Office Building, Washington, D.C.

DEAR SENATOR DANFORTH: On behalf of the Nationwide Insurance organization, I want to applaud you for your tireless efforts to bring about a reduction in our highway crash losses. Specifically, your support of automatic crash protection for American motorists is singularly noteworthy.

As in the past when you have introduced highway safety legislation, we support your current comprehensive bill, S. 1108.

In that regard, I would, respectfully request you insert the attached letter from Nationwide's President to Secretary Dole into the record of your recent NHTSA oversight hearings. It concisely states our corporate views concerning the future of passive restraints.

Sincerely,

R. E. MUNRO, *Vice President,*
Personal Lines Underwriting.

Attachment.

NATIONWIDE INSURANCE COMPANIES,
Columbus, Ohio, September, 1, 1983.

Hon. ELIZABETH HANFORD DOLE,
Secretary, U.S. Department of Transportation,
Washington, D.C.

DEAR MRS. DOLE: I would like you to know how much I enjoyed visiting with you on the occasion of your June 21, 1983 recognition dinner.

I am writing now in recognition of the fact that you will soon have Federal Motor Vehicle Safety Standard 208 before you for review. This may well be among the most difficult and important tasks you will face during your tenure as Secretary.

On behalf of the Nationwide Companies and their more than four million policyholders, I urge you to reinstate the rule as soon as possible but in no event later than the beginning of the 1986 model year. Moreover, the rule should apply equally to all car lines with no sequencing according to car size.

In the envent that you consider it desirable or necessary to initiate rulemaking, it should be limited to consideration of the timeframe for compliance.

In the meantime, I pledge to you our support and participation in "demonstration" air bag programs using both original and after market equipment. Likewise, we will continue our active support of strategies designed to increase voluntary belt use, realizing of course that neither of these activities should be viewed as alternatives for substitutes for an automatic crash protection standard.

Mrs. Dole, we applaud you for your strong commitment to transportation safety. Your renewal of the federal government's role in highway crash loss reduction is good news to American motorists everywhere.

Sincerely,

PAUL A. DONALD, *President.*

DEPARTMENT OF TRANSPORTATION,
Docket Section,
Washington, D.C.

Re: Comments of the National Association of Independent Insurers on One Year Suspension of the Automatic Occupant Restraint Requirements of Safety Standard 208, Occupant Crash Protection; 49 CFR Part 571 (Docket No. 74-14; Notice 31)

The National Association of Independent Insurers strongly urges the Department of Transportation to reconsider its decision to suspend for one year the mandatory automatic restraint requirement of Standard 208 until September 1, 1984. In our view, this delay is totally unwarranted and will mean delaying implementation of the rule one or more model years. We strongly urge DOT to reconsider this action and adopt a less cumbersome procedure for its review of this issue.

On July 24, 1983, the United States Supreme Court issued its opinion ruling that the Department of Transportation "failed to present an adequate basis and explanation for rescinding the passive restraint requirement." In the course of its opinion, the Court suggested that the rule might be suspended to consider whether to leave the rule intact or to amend the rule to provide for an air bag only standard or to authorize compliance by automatic belt systems, only if they are nondetachable. The Court directed that the agency "either consider the matter further or adhere to or amend Standard 208 along lines which its analysis supports."

The Department of Transportation on August 31, 1983 announced suspension of the rule for one year until September 1, 1984. The justification for this action is not entirely clear, since different reasons were given in the press release and the Federal Register notice issued at the time this action was announced. One fact, however, is abundantly clear: the effect of this suspension will mean that thousands more lives will be lost and hundreds of thousands of serious injuries will occur, needlessly, while awaiting implementation of the automatic crash protection rule.

The case for automatic crash protection systems was fully documented in NHTSA's rulemaking proceeding years ago. The agency's rulemaking record also amply demonstrates the fact that automatic crash protection systems exist which are reliable, acceptable to the public, and cost effective in reducing fatalities and serious injuries.

Instead of delaying the installation of these effective automatic crash protection systems, we believe the agency should be considering a practicable compliance date. Possible refinements to the rule could easily be considered in a supplemental proceeding. Thus, for example, the issue of the effectiveness of detachable belts and whether they should continue to be permitted as a complying system could be decided after "real world" experience with the rule. Likewise, the issue of going to an all air bag rule could be decided after accumulating experience under the rule.

It makes no sense to hold up use of these life-saving and injury-reducing crash protection systems merely to take comments on which of these systems represents the best possible technology. Nor does it make sense to hold up implementation to examine the issue of whether the rule should be re-rescinded since no new data or arguments have been advanced to support such action. Instead, the agency should be taking comments on the most practicable compliance date so that we can start saving lives and reducing injuries.

We strongly object, therefore, to the open-ended nature of the reconsideration proceeding DOT proposes to announce on or around October 15. If the agency determines to retain the rule, with or without amendments, the rule cannot be implemented until an effective date is announced. Presumably, this would occur after the year's suspension is up. Given the fact that the carmakers have consistently urged that they need at least a model year and perhaps two to comply with any such rule, it can be anticipated that as a result of this action, implementation will not be delayed merely one year but perhaps two or more. There is absolutely no rational reason which would justify such a delay.

The only possible motive we can see for suspending the rule for further study in this manner is that since the agency was unsuccessful in rescinding the rule and killing it outright, it has now decided to delay the rule and stall its implementation. Such tactics may privately be lauded by critics of this regulation, but the result means that thousands more innocent lives will be snuffed out needlessly and that DOT can justifiably be accused of ignoring the will of Congress and flouting the mandate of the Supreme Court.

As the following summary of the history of the automatic crash protection rule makes clear, this matter has been studied, debated and re-studied for about 15 years:

In 1966, Congress passed legislation ordering the Transportation Department to develop standards for safer automobiles in order to reduce deaths and injuries from traffic accidents.

In 1967, DOT issued an occupant protection rule requiring manual seat belts in all cars.

In 1969, DOT proposed requiring automatic crash protection systems because seat belt use was extremely low with manual belts.

In 1970, DOT revised its occupant crash protection rule to require automatic crash protection systems in all new cars.

In 1971, DOT granted a two year delay in implementing the rule.

In 1972, the U.S. Court of Appeals found the rule was supported by substantial evidence.

In 1975, DOT extended the effective date of the rule for one year.

In 1976, DOT instituted a new rulemaking on the issue which resulted in the rule's suspension and a proposal for a 500,000 vehicle "demonstration program."

In 1977, a new DOT Secretary issued a new modified automatic crash protection rule which would phase-in compliance over the 1982-84 model years starting with large cars first.

Also in 1977, Congress considered the matter of a possible legislative veto and tacitly approved the rule by refusing to use this authority.

In 1979, the U.S. Court of Appeals upheld the modified rule as consistent with the agency's mandate, rational and not arbitrary.

In 1981, DOT ordered a one year delay in implementation of the rule and later that same year attempted to rescind the rule, purportedly because it would not produce significant safety benefits.

In 1982, the U.S. Court of Appeals reviewed the agency rescission order and found it arbitrary and capricious.

In 1983, the U.S. Supreme Court reviewed the Court of Appeals ruling and agreed that there was no basis for rescinding the rule.

During this long and protracted process, numerous hearings were held, hundreds of witnesses were heard from and volumes of comments were filed on the issues. DOT heard from safety experts, health groups, insurers, economists, occupant protection systems manufacturers, and others about the societal costs of highway accidents, the clear need for automatic crash protection systems, the reliability and safety of such systems, and their cost-effectiveness. This testimony and information has been repeatedly furnished to the agency, to Congress and the courts.

Nothing has happened over these years to change the evidentiary support for this rule and that, in essence, was what the Supreme Court found also.

If there was any justification not to go forward with this rule, the Court was certainly not provided with it. In our view, the proponents of the rule have established beyond a questionable doubt that automatic occupant crash protection is needed, the systems have been proven safe, reliable and cost-effective, and now it is time they were installed in all cars for the safety of the motoring public.

We wonder today, therefore, how much further consideration of this rule is needed? How much more possibly can be said? How many more times do the proponents of automatic crash protection systems have to come forward and prove their case? How many more lives will be lost needlessly while waiting for yet more and more consideration of this rule?

NAII strongly urges DOT to reconsider this suspension action and to proceed to implement the rule at the earliest practicable time so that the Department can begin fulfilling its Congressional mandate to save lives and reduce injuries.

○